INDEX.

ABATEMENT. See ARREST, 2. ERRORS AND APPEALS, 3.

ACCOMPLICE. See CRIMINAL LAW, 11, 12.

ACCORD.

Payment of a check, given and accepted in settlement of an indebtedness of larger amount, is a good accord and satisfaction. *Goddard* v. *O'Brien*, 637, *and note.*

ACCOUNT. See EQUITY, 3. PATENT, 11.

ACKNOWLEDGMENT.

1. Is valid if made before officer *de facto*. *Sharp* v. *Thompson*, 68.

2. Is insufficient when it does not show that the instrument was executed for the "purposes" therein expressed. *Ford* v. *Burks*, 343.

3. Married woman's acknowledgment duly certified is *prima facie* but not conclusive evidence against her, except as to a *bona fide* vendee without notice as to whom she is estopped to deny an acknowledgment actually made. *Holt* v. *Moore*, 342.

4. Certificate of officer cannot be impeached except by proof of fraud or conspiracy, and the testimony of the grantor alone is not sufficient to overcome the certificate and the officer's testimony in support thereof. *Fitzgerald* v. *Fitzgerald*, 67.

5. In the absence of fraud a certificate of acknowledgment cannot be impeached by merely negativing the facts therein stated. *Strauch* v. *Hathaway*, 197.

6. In order to defeat the title of an innocent purchaser by impeaching such certificate the evidence must be so clear as to exclude every reasonable doubt. *Id.*

ACTION. See BAILMENT, 3. CONTEMPT, 2. CORPORATION, 23. DEBTOR AND CREDITOR, 22. HUSBAND AND WIFE, 5. INSURANCE, 9, 22. MORTGAGE, 24. NEGLIGENCE, 1. PENSION. TORT.

1. For obstructing a public right no private action will lie, except for damages differing in kind as well as degree from those suffered by the general public. *Chicago* v. *Union Building Assoc.*, 479.

2. The fact that property owners have been specially assessed as benefited by the opening of part of a street, gives them no equitable ground to enjoin its vacation. *Id.*

3. A court of equity is not fettered by the rule as to local actions, and the assignee of a covenant for title to land in Louisiana may maintain in Mississippi a bill to obtain reimbursement for expenditures made in resisting a suit and extinguishing a paramount title. *Oliver* v. *Love*, 600, *and note.*

4. *Semble*, such assignee might also have maintained a suit at law for money paid out and expended for the use of the covenantor. *Id.*

5. Whether an action for damages for an injury to land situated out of the state may not be maintained in the courts of Mississippi, *quære*. *Id.*

ACTS OF CONGRESS.

1802, April 29.	See ERRORS AND APPEALS, 10.
1870, July 14.	See TAX, 5.
1872, May 10.	See MINES, 1.
1872, July 1.	See ERRORS AND APPEALS, 10.
1874, Revised Statutes.	
Sect. 614.	See ERRORS AND APPEALS, 8.
Sect. 639.	See REMOVAL OF CAUSES, 4.
Sect. 693.	See ERRORS AND APPEALS, 10.
Sect. 858.	See UNITED STATES COURTS, 1.
Sect. 916.	See UNITED STATES COURTS, 4.
Sect. 1008.	See ERRORS AND APPEALS, 16.
Sect. 2330.	See UNITED STATES, 2.
Sect. 2331.	See UNITED STATES, 2.
Sect. 3220.	See TAXATION, 11.
Sect. 3228.	See TAXATION, 11, 12.
Sect. 3408.	See TAXATION, 10.
Sect. 4282.	See ADMIRALTY, 9.
Sect. 4283.	See ADMIRALTY, 8.
Sect. 4284.	See ADMIRALTY, 7.
Sect. 4285.	See ADMIRALTY, 7.
Sect. 4513.	See SHIPPING, 3.
Sect. 4582.	See SHIPPING, 2.
Sect. 4584.	See SHIPPING, 2.
Sect. 5198.	See NATIONAL BANK, 2.
Sect. 5220.	See NATIONAL BANK, 1.
Sect. 5228.	See NATIONAL BANK, 3.
Sect. 5431.	See CRIMINAL LAW, 22.
1874, June 6.	See MINES, 1.
1875, February 16.	See ADMIRALTY, 3.
March 3.	See REMOVAL OF CAUSES, 3.

ADMINISTRATOR. See EXECUTOR.

ADMIRALTY. See ATTACHMENT, 3, 4. ERRORS AND APPEALS, 4.

I. *Jurisdiction.*

1. Has jurisdiction of suit by one who, expecting a consignment, boards a vessel upon her arrival and is injured by the fall of bales negligently stowed. *Leathers* v. *Blessing*, 747.

2. A writ of prohibition will not be granted to restrain an admiralty court from proceeding in a cause instituted to recover damages for loss of life occasioned by a collision. *Ex Parte Gordon*, 267.

3. The Act of Congress of February 16th 1875, confining the appellate jurisdiction of the Supreme Court to questions of law, is constitutional. *Duncan* v. *Steamship Francis Wright*, 747.

4. The refusal to find a fact, or the finding of one not supported by any evidence, may be brought up by bill of exceptions, provided that the fact be an ultimate one and not a mere incidental piece of evidence, but in such case the testimony necessary to establish the exceptions should appear in the bill. *Id.*

II. *Collision.* See NEGLIGENCE, 2, 3.

5. Upon a libel for collision libellant may recover damages for the loss of the use of his vessel while undergoing repairs, and if she was fitted for a particular business the average net profits of her trips may be adopted as the measure of damages. *Steamboat Potomac* v. *Cannon*, 677.

6. A vessel was insured on two-thirds of her valuation, under an agreement that in case of loss the insurers should be entitled to the same proportion of the damages recoverable from any other person therefor. A loss occurring by collision the insurers paid their two-thirds, and then assigned the owners of the other vessel all their interest in the damages. Half damages having been recovered against the latter vessel, *held*, that one-third of the sum paid by the insurers must be deducted from the amount to be recovered. *Id.*

ADMIRALTY.

III. *Liability of Ship-owners.*

7. A vessel owner may institute proceedings to obtain the benefit of the limitation of liability secured by sections 4284 and 4285, U. S. Rev. Stats., without waiting for a suit to be begun against him or his vessel. *Ex parte Slayton*, 543.

8. The Limited Liablility Act of Congress does not apply to boats on streams connecting the great lakes. *Cuddy* v. *Horn*, 302.

9. The Limited Liability Act of 1851, reproduced in sects. 4283, &c., Rev. Statutes, applies to owners of foreign as well as domestic vessels, and to acts done on the high seas, except when a collision occurs between two vessels of the same foreign nation, or, perhaps, of two foreign nations having the same maritime law. *Nat. Steam Nav. Co.* v. *Dyer*, 479.

10. Shipowners may avail themselves of the defence of limited liability by answer or plea. *Id.*

11. If the owners plead the statute, a decree may be made requiring them to pay the limited amount into court, and distributing said amount *pro rata* among the parties claiming damages. *Id.*

12. It is not necessary for the owners to surrender the ship. They may plead their immunity, and abide a decree for the value of the ship and freight. *Id.*

13. The rule of damages for goods lost on the high seas is their value at the place of shipment, with all charges of lading, insurance and transportation, and interest at the rate of six per cent. per annum, but without allowance for anticipated profits. If the goods had no market value at the place of shipment, other means of ascertaining their value may be used, such as their usual price at the port of destination, with a fair deduction for profits and charges. *Id.*

IV. *Maritime Liens.*

MARITIME LIENS, 1, 81, 145.

ADVANCEMENT.

Loose declarations of a parent are not sufficient to change a debt secured by a legal instrument into an advancement. *Harley* v. *Harley*, 480.

AGENT. See ATTORNEY. BANK, 2. BILLS AND NOTES, 1, 11. BROKER. CRIMINAL LAW, 5. INFANT, 1. INSURANCE, 8. PUBLIC POLICY. TELEGRAPH, 9. TROVER, 1.

1. An architect employed to superintend the building of a house, erected under a written contract with the owner, has no authority to order extra work, nor will the fact that the owner received from the builder a statement of this extra work without making objection estop the owner from afterwards objecting. *Starkweather* v. *Goodman*, 267.

2. A real estate broker who assumes to act for both parties in an exchange of lands, cannot recover compensation for both without showing full knowledge of and assent to the double compensation, but when such consent is shown, he may recover from each party. *Bell* v. *McConnell*, 135.

3. Authority to sell property and take note does not include authority to receive payment of the note after delivery to the principal. *Draper* v. *Rice*, 416.

4. Where the holder of a bill of exchange deposits it with a bank for collection, the correspondent of the bank, to whom the bill is forwarded, becomes his agent, and is directly responsible to him for negligence. *Guelich* v. *Nat. State Bank of Burlington*, 543.

5. An agent to sell has no implied power to agree to pay commissions to another. *Atlee* v. *Fink*, 678.

6. Fraud of, committed in line of employment, renders the principal liable. *Hopkins* v. *Hawkeye Ins. Co.*, 748.

7. Where one signs a check as agent, and the party with whom he deals has full knowledge of his agency, and of the principal for whom he acts, the omission of the principal's name from the check will not render the agent personally liable. *Metcalf* v. *Williams*, 134.

8. Notice to bank director while not engaged in the business of the bank not notice to the bank. *Fairfield Savings Bank* v. *Chase*, 68.

AGENT.

9. Knowledge of agent obtained prior to his employment, is notice to the principal when it is so fully in mind that it would not have been forgotten, and so material as to create a duty to disclose it. *Fairfield Savings Bank* v. *Chase*, 68.

10. Upon a purchase by an agent where the vendor is ignorant of the agency, or knowing of the agency, is not informed as to who is the principal, he may elect to make the principal his debtor, and is not debarred from such election by having taken the promissory note of the agent for the goods. *Merrill* v. *Kenyon*, 198.

ALIMONY. See HUSBAND AND WIFE, 6–10.

ALLEY. See VENDOR AND VENDEE, 9.

APPLICATION OF PAYMENTS. See LIMITATIONS, STATUTE OF, 7. SURETY, 10.

APPORTIONMENT See LIFE TENANT.

ARBITRATION.

An agreement in a contract to submit all differences thereunder to arbitration is a good defence to a suit by either party, but such defence is waived by a failure to plead the agreement. *Alford* v. *Tiblier*, 198.

ARREST.

1. Parties and witnesses in any legal tribunal are privileged from arrest on civil process during their attendance, and for a reasonable time in going and returning, and this protection extends to parties and witnesses attending before arbitrators, commissioners or examiners. *Larned* v. *Griffin*, 672.

2. This privilege can be enforced by plea in abatement. *Id.*

3. The privilege is not waived either by giving a bail bond or by filing an answer to the merits with the plea of abatement. *Id.*

ASSAULT. See CRIMINAL LAW, II.

ASSIGNMENT. See DEBTOR AND CREDITOR, 17, 19. LANDLORD AND TENANT, 3. PARTNERSHIP, 3. PLEDGE, 1–3. SURETY, 2. VENDOR AND VENDEE, 10.

ASSUMPSIT.

Indebitatus assumpsit lies to recover the price of an article delivered on a written order, and in such case the writing is admissible evidence. *Gibson* v. *Vail*, 77.

ATTACHMENT. See ATTORNEY, 6. CONFLICT OF LAWS, 1. CORPORATION, 3, 6. DEBTOR AND CREDITOR, 21. ESTOPPEL, 1. PARTNERSHIP, 1. SALE, 2. STOPPAGE IN TRANSITU.

1. A foreign corporation is liable to garnishment, and service of process may be made on its agent. *Han. & St. J. Railroad* v. *Crane*, 480.

2. An executor or administrator is not subject to garnishment before a final order for the distribution of the estate is made. *Case Threshing Machine Co.* v. *Miracle*, 420.

3. Where wages of a seaman are attached, and the owners are compelled by admiralty proceedings to pay such wages, they will not be charged as trustees. *Eddy* v. *O'Harra*, 807.

4. Whether wages of a seaman on a coasting voyage are subject to attachment. *Quære.* *Id.*

5. Garnishee cannot contest the validity of the original judgment because of failure to comply with all the provisions of the Code. *Cowan* v. *Lowry*, 68.

6. In foreign attachment where the answer of the garnishee shows no indebtedness at the time of the attachment, the court has no jurisdiction, although the garnishee admits an indebtedness at the time of answer. *Morris* v. *Union Pacific Railroad*, 420.

7. In trustee process plaintiff may put interrogatories to the trustee calculated to elicit facts which will tend to charge him, but not to contradict or impeach him. *Nutter* v. *Framingham & Lowell Railroad Co.*, 345.

8. An attaching creditor cannot maintain an action to redeem land covered

ATTACHMENT.

by his attachment from a mortgage executed by the debtor. *Fisher* v. *Tallman*, 345.

9. A plaintiff has no greater rights against the garnishee than the defendant would have had. *Waldron* v. *Wilcox*, 346.

10. An order by a court of one state requiring a debtor to the defendant in a judgment recovered therein to pay the debt to the plaintiff, will be recognised by the court of another state if the debt so ordered to be paid is in the custody of the latter court, but not if the moneys are in the hands of a corporation of the latter state which had not been summoned in the proceedings. *Elizabethtown Sav. Inst.* v. *Gerber*, 615.

11. Whether moneys can be attached in one state in the hands of a litigant in the courts of another state when the time for pleading on the part of such litigant has expired. *Quære.* *Id.*

12. A statute authorized an attachment where the debtor had fraudulently conveyed his property, and also where he had fraudulently concealed or disposed of it: *Held*, that the word "disposed" did not include any alienations covered by the other sections of the statute, and that a charge of fraudulent disposal was not proved by evidence of a fraudulent mortgage. *Bullene* v. *Smith*, 73.

ATTORNEY. See CRIMINAL LAW, 18. LIBEL, 4. MALICIOUS PROSECUTION, 2. SET-OFF, 1.

1. Compromise by, without the knowledge of the client, is invalid, but the leaning of the courts is in favor of upholding such compromise if fairly made. *Whipple* v. *Whitman*, 475.

2. The assent of the equitable party to the compromise is sufficient without the assent of the legal party. *Id.*

3. A compromise by an attorney, of a wife's suit, with her consent, will not be set aside upon the petition of the husband filed a year afterward. *Id.*

4. Has no power to compromise a cause although his client lives in another state. *Granger* v. *Batchelder*, 678.

5. Has no power to compromise claims, but a ratification of such a compromise may be inferred from acquiescence of the client or from other circumstances. *Fritchey* v. *Bosley*, 343.

6. May release an attachment of property and such release will bind his client as against an innocent purchaser. *Benson* v. *Carr*, 416.

7. Cannot be summarily disbarred for a libel on the judge not designed to influence the exercise of his judicial functions. *Ex parte Steinman*, 616.

8. Attorneys engaged jointly in a suit are as to that suit partners and divide equally the compensation, and neither has any remedy against the other for failure to perform his full duty. *Henry* v. *Bassett*, 678.

9. The proper scope of the right to charge a retainer is to compensate counsel for the loss of the opportunity of being employed by the other side. *McLellan* v. *Hayford*, 68.

10. There is no such general custom to charge retainers as would justify a binding instruction that they were a legal charge in such case. *Id.*

11. When there is an express agreement for a particular fee the client should be credited thereon with an allowance to the attorney, decreed by the chancellor in equity proceedings to be paid to the attorney out of the estate. *Shreve* v. *Freeman*, 678.

12. An agreement to prosecute an action for one-half the amount recovered in case of success, and for nothing in case of failure, is void for champerty, and the client may recover from the attorney the whole amount recovered, less the costs paid. *Achert* v. *Barker*, 543.

13. Women are entitled to admission to the bar under a general statute not confined in terms to the male sex. *In re Mary Hall*, 728, *and note.*

BAILMENT.

1. A bailee cannot acquire title to the property adverse to that of his bailor through a tortious seizure and sale of the property by a third person. *Enos* v. *Cole*, 134.

2. Moneys paid by the bailee at such a sale without authority from the bailor cannot be recovered from the latter. *Id.*

BAILMENT.

3. The property having returned to the bailee, the bailor cannot, without proof of actual damage, maintain an action against such third person as for a conversion. *Enos* v. *Cole*, 134.

4. An artisan has a lien for work done on property whether under an express agreement for a stipulated price or an implied contract for reasonable compensation, and if several articles are included in one contract, he has a lien on each for the work done on the whole. *Hensel* v. *Noble*, 616.

BANK. See AGENT, 4, 8. CONTRACT, 11. CORPORATION, 3, 4, 5, 27. EXECUTORS, 7. NATIONAL BANK. TAXATION, 10, 16–19.

1. Is not liable for a failure of duty on the part of a notary in whose hands it has placed for protest notes sent to it for collection. *Britton* v. *Nicolls*, 544.

2. Has no lien upon moneys deposited by one as agent with notice to the bank of the principal for debts due by the agent, even though the agent sometimes deposited his own moneys in the account and drew checks for his private use. *Cent. Nat. Bank* v. *Connecticut Mut. Life Ins. Co.*, 68.

3. The certification of a check by the bank on which it is drawn is equivalent to an acceptance, and the bank may be sued thereon by any holder. *Louisiana Ice Co.* v. *State Nat. Bank*, 135.

4. When a bank receives on deposit checks or notes, the deposit is usually for collection only, and the depositor may revoke the bank's agency. *Id.*

5. A depositor is not bound by the rules of a clearing house to which the bank belongs. *Id.*

BANKRUPTCY. See CORPORATION, 22. DEBTOR AND CREDITOR, 11.

1. A subscription to the stock of a corporation is a debt which is barred by a discharge in bankruptcy. *Morrison* v. *Savage*, 342.

2. Assignee allowing bankrupt to continue suit in his own name, is bound by the judgment. *Thatcher* v. *Rockwell*, 807.

3. New promise by bankrupt, after adjudication and before discharge, is binding. *Knapp* v. *Hoyt*, 807.

4. An assignee in bankruptcy cannot maintain a bill to compel the execution of an agreement among secured creditors not affecting the general estate. *Dudley* v. *Easton*, 135.

BILL OF EXCEPTIONS. See ADMIRALTY, 4.

1. Should not contain the charge in full but only the parts necessary to point the exceptions. *United States* v. *Rindskopf*, 748.

2. The signature of the judge should be withheld until the bill is freed from irrelevant matter. *Id.*

BILL OF LADING. See COMMON CARRIER, 4.

When given by a master or shipping agent for goods not received, is void in the hands of a subsequent *bona fide* purchaser. *Pollard* v. *Vinton*, 544.

BILL OF REVIEW. See EQUITY, 17.

After decree on the merits and remittitur, an appellate court has no jurisdiction to entertain a bill of review. *Putnam* v. *Clark*, 616.

BILLS AND NOTES. See CHECK. EVIDENCE, 9. EXECUTORS, 4. LIMITATIONS, STATUTE OF, 2. LUNATIC, 1. PARTNERSHIP, 18, 21. PAYMENT, 1. SURETY, 5. USURY, 2, 3

I. *Form, consideration, &c.*

1. Where a bill is signed, "Bellville Nail Mill Co., A. B., Prest., C. D. Secy.," the officers signing are not individually liable. *Hitchcock* v. *Buchanan*, 679.

II. *Rights of parties.*

2. That a third party holds a negotiable note for a valuable consideration will not of itself deprive the maker of defences valid against the payee. It must appear that the note was purchased in the usual course of business or for its face value. *Millard* v. *Bartom*, 807.

3. Maker cannot show payment to third party in accordance with contemporaneous parol agreement differing from terms of note. *Draper* v. *Rice*, 417.

BILLS AND NOTES.

4. Possession of note by personal representative of payee, is *prima facie* evidence that it is not paid, and throws on maker the burden of proving payment. *Ritter* v. *Schenck*, 267.

5. Payment of interest on note in ignorance of his rights will not estop maker from proving prior payment in full. *Id.*

6. The seller of note does not warrant the solvency of the maker. *Day* v. *Kinney*, 267.

7. A note given under threat of suit, and in settlement of a claim known to both parties to be fraudulent, is void in the hands of a third party who was a general purchaser of the payee's notes, and knew of his dishonest methods of obtaining them. *Ormsbee* v. *Howe*, 679.

8. In a suit between the parties to a note, the defendant may show by parol want of failure of consideration. *Ingersoll* v. *Martin*, 748.

9. It is not as a matter of law negligence for the maker of a note to trust to the agent of the payee to read it correctly. *Hopkins* v. *Hawkeye Ins. Co.*, 748.

10. A statute requiring the defendant's denial of signatures to a written instrument to be by plea verified by affidavit, does not apply to a case where defendant claims that the instrument is on its face the contract of his principal and not his own. *Hitchcock* v. *Buchanan*, 679.

III. *Endorsement, Acceptance, &c.*

11. An acceptance of a draft drawn by an agent is a guarantee of the agent's authority as to innocent holders, but not as to the party who first received the draft and who was bound to have made inquiry. *Agnel* v. *Ellis*, 198.

12. The acceptance by a creditor of a note of his debtor, or of a third person, is not presumed to be in payment of the debt, but as collateral security or conditional payment. *Hunter* v. *Moore*, 514, *and note.*

13. If conditional payment, it is necessary to inquire what the condition was, and if not fulfilled, what injury has resulted from the breach. *Id.*

14. A creditor transferring such note to his creditor by delivery only, is not relieved by the failure of the creditor to give him notice of non-payment unless actual damage results therefrom. *Id.*

15. Nor by acceptance by the creditor from the maker of the note of a draft subsequently protested. *Id.*

16. Accommodation endorser liable to one who takes the note as collateral for an antecedent debt. *Pitts* v. *Foglesong*, 417.

17. Blank endorsement will be construed to give effect to the intention, and may be explained by parol. *Owings* v. *Baker*, 69.

18. Third party endorsing before payee may avoid the presumption that he is liable as joint promissor by proving a different understanding of all the parties, payee included. *Id.*

19. If a note payable to order be transferred without endorsement, the transferree cannot sue in his own name. *State* v. *High Bridge M. E. Ch. Asso.*, 679.

20. Third party signing note after delivery incurs no liability thereon. *McMahan* v. *Geiger*, 69.

21. One signing a note after others, without explanation as to the character in which they have signed, may assume that they are joint makers, and he will become liable as surety or guarantor for all; but whether surety or guarantor is not decided. *Id.*

IV. *Presentment, &c.*

22. The drawer of a draft is discharged by the acceptance by the payee of the drawer's check, and a failure to present such check until a day after it could have been collected. *Fernald* v. *Bush*, 544.

23. Where a notary is unable, after diligent inquiry, to ascertain the address of the drawer of a draft, he may direct the notice of protest to him at the place where the draft was drawn or dated. *Page* v. *Valery*, 135.

BOARD OF TRADE.

Nature of right of membership in. *Note to Smith* v. *Barclay*, 408.

BOND. See OFFICER.

BRIBERY. See CONSTITUTIONAL LAW, 4. CRIMINAL LAW, III.

BROKER. See AGENT, 2. CUSTOM, 1. ESTOPPEL, 2.

1. Is entitled to compensation when he finds one who makes a written contract of purchase or sale with his employer. *Veazie* v. *Parker*, 69.

2. It is no part of his duty to advise as to the terms of the contract or explain its words. *Id.*

3. Conversations between buyer and seller before and after the contract not admissible to affect his compensation. *Id.*

BUILDING ASSOCIATION. See CORPORATION, 16.

BURDEN OF PROOF. See CRIMINAL LAW, 1, 28–30. DEBTOR AND CREDITOR, 6. HUSBAND AND WIFE, 11. LUNATIC, 5. NEGLIGENCE, 4.

CANAL. See CONSTITUTIONAL LAW, 5.

CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Allen *v.* Merchants' Bank, 22 Wend. 215, disapproved. *Britton* v. *Nicolls*, 544.

Arimond *v.* Green Bay and M. Canal Co., 31 Wis. 316, distinguished. *Black River Imp. Co.* v. *La. C. Booming and Trans. Co.*, 424.

Boxborough *v.* Messick, 6 Ohio St. 448, distinguished. *Pitts* v. *Foglesong*, 417.

Boyd *v.* Mosely, 2 Swan 660, distinguished. *Mississippi Mills* v. *Union and Planters' Bank*, 534.

Cook *v.* Corthell, 11 R. I. 482, explained and distinguished. *Carpenter* v. *Scott*, 551.

Cumber *v.* Wane, 1 Str. 426, commented on. *Goddard* v. *O'Brien*, 637.

Davis *v.* Brown, 94 U. S. 423, distinguished. *Martin* v. *Cole*, 73.

Day *v.* Baldwin, 34 Iowa 380, distinguished. *Kerdt* v. *Porterfield*, 548.

Delaplaine *v.* C. and N. W. Railway Co., 42 Wis. 230, distinguished. *Black River Imp. Co.* v. *La. C. Booming and Trans. Co.*, 424.

Dorchester, &c., Bank *v.* New England Bank, 1 Cush. 177, followed. *Britton* v. *Nicolls*, 544.

Frazier *v.* State, 23 Ohio St. 551, approved and followed. *McHugh* v. *State*, 618.

Gaff *v.* Flesher, 33 Ohio St. 115, 453, approved and followed. *Rowland* v. *Meader Fur Co.*, 617.

Henning *v.* U. J. Ins. Co., 47 Mo. 425, distinguished. *Baile* v. *St. Joseph F. and M. Ins. Co.*, 37.

King *v.* Nichols, 16 Ohio St. 80, approved. *Dawson* v. *The State*, 421.

Lewis *v.* Railroad Co., 59 Mo. 495, followed. *Hall* v. *Mo. Pac. Railroad Co.*, 485.

Morrison *v.* Hancock, 40 Mo. 564, overruled. *Deardorff* v. *Everhartt*, 348.

Niles *v.* Gray, 12 Ohio St. 320, followed. *Pratt* v. *Sinlon*, 269.

Railway Co. *v.* Cumminsville, 14 Ohio St. 524, approved. *Scioto Valley Railroad Co.* v. *Lawrence*, 422.

Ross *v.* Epsy, 66 Pa. St. 483, dissented from. *Martin* v. *Cole*, 73.

Susquehanna Bridge Co. v. Evans, 4 Walsh. Cir. Ct. Rep., dissented from. *Martin* v. *Cole*, 73.

A Remark in School District *v.* Zink, 25 Wis. 636, overruled. *Williams* v. *Williams*, 619.

Vyne *v.* Glenn, 41 Mich. 112, distinguished. *Hackley* v. *Headley*, 109.

Williams *v.* Briggs, 11 R. I. 476, explained and distinguished. *Carpenter* v. *Scott*, 551.

CAVEAT EMPTOR. See JUDICIAL SALE, 1.

CHAMPERTY. See ATTORNEY, 12.

CHARITY.

I. Bequest to "benevolent associations of this city for the benefit of white and colored children" is void for uncertainty. *The Henry Watson Childrens' Aid Soc.* v. *Johnston*, 748.

2. A gift of a fund to establish and maintain a school of learning is a charitable trust. *Taylor's Ex'rs* v. *Trustees of Bryn Mawr College*, 70.

CHARITY.

3. A court will not administer a foreign charity, but where such charity is valid and the trustees have capacity to receive the fund and administer it, the court will order its payment to them. *Taylor's Ex'rs* v. *Trustees of Bryn Mawr College*, 70.

4. A trust to employ the income of moneys for the relief of the most deserving poor of a city forever, without regard to color or sex; but no person who is known to be intemperate, lazy, immoral or undeserving, to receive any benefit from the said fund, with a power of appointing and substituting trustees for those named, is a valid charity, and will be executed. *Hesketh* v. *Murphy*, 659.

5. What trusts will be supported as charities. *Id.*, *Note.*

CHATTEL MORTGAGE. See MORTGAGE, II.

CHECK. See ACCORD. AGENT, 7. BANK, 3, 4. BILLS AND NOTES, 22. GIFT, 6.

The mere fact that the holder of a check received it when eight days overdue does not render his title subject to the equities between the drawer and payee, but it is a question for the jury whether the check was taken under circumstances which should have excited suspicion, and the fact that it was eight days overdue is evidence on that question. *London, &c., Bank* v. *Groome*, 770, *and note.*

CITIZENSHIP. See REMOVAL OF CAUSES, 1.

CITY. See MUNICIPAL CORPORATION.

COLLATERAL SECURITY. See PLEDGE.

COLLISION. See ADMIRALTY, II.

COMMITTEE. See PARTNERSHIP, 6.

COMMON CARRIER. See RAILROAD, 1, 2.

1. Is liable for safe carriage of baggage checked to point beyond its own line for passengers travelling on coupon tickets. *Louisville & Nashville Railroad* v. *Weaver*, 748.

2. The liability of a railroad company as a carrier ceases when the freight is deposited in a warehouse, and is not extended by a statute requiring notice to the consignee. *Butler* v. *Railroad Co.*, 70.

3. Though a railroad stipulates that it is not to be responsible for attention to live stock, yet if it carries the stock beyond their destination it is liable for loss by want of such attention while they are detained. *Bryant* v. *Southwestern Railroad*, 343.

4. A general stipulation in a bill of lading will not limit the liability of a common carrier, nor will an express contract protect him from the results of his own negligence. *Georgia R. & B. Co.* v. *Gann*, 267.

5. Where goods are shipped over connecting lines the last road receiving them in good order is liable to the consignee for damages. *Id.*

6. The receipt of goods for transportation without exception is impliedly a receipt as in good order, and renders the carrier liable for any injury. *Id.*

7. In the absence of special contract a common carrier is not liable for loss of the goods after delivery to the next succeeding carrier on a through route, nor will such contract be implied from the fact of an arrangement among the carriers for a stipulated tariff for the whole route to be apportioned among them. *St. Louis Ins. Co.* v. *St. L., Vt. & I. Railroad Co.*, 136.

COMMON LAW.

1. A statute adopting the common law of England does not require the courts to enforce the local customs of that realm. *Han. & St. J. Railroad* v. *Crane*, 480.

2. ADOPTION OF, BY THE AMERICAN COLONIES, 553.

CONDITIONAL SALE. See DEBTOR AND CREDITOR, 4, 5. SALE, 1, 3.

CONFESSION. See CRIMINAL LAW, 3.

CONFLICT OF LAWS. See ATTACHMENT, 10. EVIDENCE, 10. HUSBAND AND WIFE, 1, 3. RECEIVER, 4. UNITED STATES COURTS, 5.

1. Where the rolling-stock of a railroad is attached by unsecured creditors in one state pending an application for a receiver in another state by creditors secured by a mortgage covering the road and its equipments, the receiver subsequently appointed may, under the comity between states, assert his right to the stock by an action in his own name in the state in which it was attached. *Merchants' Nat. Bank* v. *McLeod*, 617.

2. The state courts will respect as valid a judgment of a federal court against a county on its bonds, notwithstanding the same bonds are held by the state courts to be void. *State* v. *Rainey*, 480.

3. A state will not recognise the right of inheritance of an adopted child under the laws of another state in which the adoption took place, if, under its own laws, no such right exists. *Keegan* v. *Geraghty*, 198.

4. As against an adopted child, a statute regulating descents should be strictly construed. *Id.*

CONSIDERATION. See CONTRACT, 6, 12.

CONSTITUTIONAL LAW. See ADMIRALTY, 3. CRIMINAL LAW, 18. DESCENT, 2. INTOXICATING LIQUORS. MUNICIPAL CORPORATION, 1, 12, 16. TAXATION, 1, 3, 7.

Powers of Legislature.

1. The legislature may pass a Statute of Limitation for suits on existing causes of action, provided that a reasonable time be given before the bar of the statute commences. *Town of Koshkonong* v. *Burton*, 548.

2. If interest on interest be allowed by the local law at the time of the contract, that right cannot be taken away by a subsequent legislative declaration as to what was the intent of the statutes prescribing the rate of interest in force at the time the contract was made. *Id.*

3. An act to compromise the bonded indebtedness of a state, which provides for the issuing of new bonds, the coupons of which shall be receivable in payment of all taxes and debts due the state, except for taxes for the school fund, is unconstitutional, and the officers of the state may, at the suit of a tax-payer, be enjoined from issuing such bonds. *Lynn* v. *Polk*, 321, *and note.*

4. The courts cannot enjoin the execution of a statute because of alleged bribery of members of the legislature to pass it. *Id.*

5. A state leasing surplus water from a canal, reserving the right to resume the privilege when not necessary for navigation, is not bound to maintain the canal for the benefit of the lessees after it has ceased to be needed for navigation, and a statute abandoning it is valid. *Fox* v. *Cincinnati*, 417.

6. A statute as to peddlers' licenses, which discriminates against the productions of other states, is void. *State* v. *McGinniss*, 417.

7. The legislature may enlarge or diminish the powers of a county and vary its boundaries. It may, after part of the territory of another county has been added to it, require payment of part of the latter's debt, and may direct how the debt shall be ascertained. *Pulaski County* v. *County Judge of Sabine County*, 417.

8. A statute making the notorious character of the premises, or the intemperate character of persons frequenting the same, or the keeping of the usual implements of tippling shops, *prima facie* evidence that liquors are kept on the premises for sale is unconstitutional. *State* v. *Beswick*, 199.

9. Statutory provisions whereby different classes of property are listed and valued for taxation in different modes, are not necessarily in conflict with a constitutional provision that all property shall be taxed by a uniform rule and according to its true value. *Wagoner* v. *Loomis*, 423.

10. Where a statute enacts that every act of incorporation shall be subject to repeal, such right of repeal becomes part of every subsequent charter. *Greenwood* v. *Union Freight Railroad Co.*, 481.

11. After such repeal a corporation can originate no new transactions which could not be exercised by unincorporated persons. *Id.*

12. The rights of the shareholders to the property of the corporation, and rights of contract and choses in action are not destroyed by such repeal, and if

CONSTITUTIONAL LAW.

the legislature has provided no specific mode of enforcing such rights, the courts will do so by the means within their power. *Greenwood* v. *Union Freight Railroad Co.*, 481.

13. So far as the property or franchises of the old corporation were necessary to the public use, the legislature could authorize a new corporation to take them on making due compensation. *Id.*

14. A statute which, under a reserved right, repeals an act of incorporation and creates a new corporation with similar powers, the use of which requires the exercise of eminent domain, is not unconstitutional if it provides for compensation for the property of the extinct corporation so taken by the new one. *Id.*

15. The imposition by a state upon every telegraph company doing business within its borders, of a tax on every message, is unconstitutional as to messages sent out of the state, and as to messages of the federal government. *Western Union Tel. Co.* v. *State of Texas*, 544.

16. A statute imposing a penalty upon "every person who shall keep a place in which it is reported that intoxicating liquors are kept for sale, without having a license therefor," is unconstitutional. *State* v. *Kartz*, 544.

17. Legislation which does not violate any constitutional prohibition may be retroactive, but such construction is not favored by the courts. *Dours* v. *Cazentre*, 544.

18. Where the title of an act gives notice of only a part of the matters contained therein, it is valid as to such part and void as to the residue. *Dewhurst* v. *City of Allegheny*, 617.

19. Where a statute authorizes a township to convey a farm within its limits to a city, and declares that the farm should remain liable to taxation by the township, such power of taxation may be repealed. *State* v. *Williamson*, 679.

20. A declaration in a general law that all acts or parts of acts inconsistent with it are repealed, will repeal inconsistent provisions in prior special acts. *Id.*

II. *Powers of the Judiciary.*

21. The courts will not interfere with the exercise of a discretion vested by law in any executive officer of a state, but where the discretion has been lawfully exercised by the legislature, the courts will compel the obedience of such officer thereto. *State of Louisiana* v. *Jumel*, 136.

22. A proceeding to compel the state auditor to disobey the instructions of the state to distribute the state funds is an action against the state, which, by reason of its sovereignty, will not lie. *Id.*

III. *Eminent Domain.*

23. Where the construction of a railroad in a street will work material injury to the abutting property, such construction may be enjoined until proceedings are instituted for the appropriation of private property according to law. *Scioto Val. Railroad* v. *Lawrence*, 422.

24. Authority given to a railroad to build upon or across any highway, with a stipulation that the highway shall be restored to its former state, or so as not to impair its usefulness, does not authorize a use to the exclusion of ordinary travel thereon. *P., Ft. W. & C. Railroad* v. *Reich*, 201.

CONTEMPT.

1. After a rule against a sheriff to pay money has been made absolute, he cannot be attached for non-compliance, without a rule to show cause. *Mize* v. *Barsden*, 808.

2. A justice of the peace cannot commit to prison for non-payment of a fine for contempt where the judgment imposing the fine does not provide for imprisonment; and he is liable in damages for such commitment. *Laupher* v. *Dewell*, 545.

CONTRACT. See BANKRUPTCY, 3. CORPORATION, 7. EVIDENCE, 1, 3, 4, 9. GUARANTY. INFANT. LUNATIC. MASTER AND SERVANT, 1, 2. PUBLIC POLICY. SHERIFF'S SALE, 1.

1. The signature of the party to be charged is not necessary to the validity of a written contract not within the Statute of Frauds. *Bacon* v. *Titus*, 136.

CONTRACT.

2. An agreement between the parties to a contract and a third person whereby one party is released from the obligations of the contract, and the third person substituted, is a novation, and requires no further consideration than such release and substitution. *Bacon* v. *Titus*, 136.

3. A clause in a contract of sale that the measurement shall be by a person named is obligatory in default of fraud, and a simple averment in an answer that the measurement is not correct will not warrant the introduction of evidence to contradict or amplify the contract. *Dauner* v. *Otis*, 200.

4. In a suit on a stockbroking contract evidence is admissible to show the meaning of the words "on margin" in the business, and if it appears that the contract was not one for the mere payment of differences, but for the actual purchase of stock it is not a gaming contract. *Hatch* v. *Douglass*, 199.

5. The custom of stockbrokers to debit and credit interest monthly, computing interest on balances, does not necessarily involve usury. But if it did it is only a question of its allowance by the courts and does not affect the contract for the purchase of the stocks. *Id.*

6. A. sold goods to B. taking in payment the standing wood on a farm held by B. Of this wood the amount brought to market by A. only paid the outlay for cutting and hauling, and the trade with B. was made pending equity proceedings which involved the title to the farm and which resulted adversely to B. *Held*, that there was a total failure of consideration, and that A. could maintain assumpsit against B. for the value of the goods. *Peckham* v. *Kiernan*, 199.

7. A contract containing the words "we promise to pay," and signed by two persons describing themselves respectively as "president school board" and "secretary school board," but which contained no reference to any school district: *Held*, to be the personal obligation of the signers, and that they could not show by parol evidence a contrary intention. *Wing* v. *Glick*, 545.

8. Upon a sale of merchandise to be delivered in successive parcels, the purchaser may rescind for non-delivery of one. *Norrington* v. *Wright*, 395, *and note.*

9. The vendor in such cases cannot insist upon the contract being treated as severable, for the purpose of avoiding the right of rescission. *Id.*

10. The right of rescission is not waived by an acceptance of a portion in ignorance of a default as to the remainder. *Id.*

11. A guaranty of a third person upon a note given by a director to a bank for an indebtedness prohibited by the bank's charter is void and cannot be recovered upon. *Workingmen's Banking Co.* v. *Raatenberg*, 680.

12. A release on payment of part of debt is *nudum pactum*, but if under seal the seal imports consideration. *Ingersoll* v. *Martin*, 749.

13. A promise to pay made after a release is not binding. *Id.*

14. A., owning a railroad, informed B., who was using it, that he would thenceforth charge $2 per car. B. replied that he would not pay it, and continued to use the road: *Held*, that A. could only recover the reasonable value of the use of the road. *Curtis* v. *Giers*, 749.

15. A. owed B., and C. owed A.: by agreement of the three, C. gave his note to B., and was substituted in place of A. as B.'s debtor. C. was insolvent at the time, but this fact was unknown to all the parties. *Held*, that the loss fell on B. *Cadens* v. *Teasdale*, 70.

16. A contract provided that certain logs purchased should be measured in accordance with the scale in general use on Muskegon Lake. *Held*, that the scale in use at the time of measurement, and not that in use at the time of contract, was the one intended. *Hackley* v. *Headley*, 109.

17. On an issue to determine whether services were rendered gratuitously by a son-in-law, there was evidence that the parties lived together on the father-in-law's land; that the father-in-law said he expected to live there all his days: that the land was to be his daughter's when he died, and that he intended to pay his way. *Held*, sufficient to warrant a verdict in favor of the son-in-law. *James* v. *Cummings*, 808.

COPYRIGHT.

1. The deposit of two copies of the copyrighted publication with the librarian of Congress, must be proved in an action for infringement. *Merrill* v. *Tice*, 344.

COPYRIGHT.

2. A memorandum of such deposit upon a copy of the record of the title page certified by the Librarian of Congress, is not competent evidence thereof. *Merrill* v. *Tice*, 394.

3. Whether the certificate of the librarian, under his official seal, that the books had been deposited would be competent evidence, *quære*. *Id.*

CORPORATION. See ATTACHMENT, 1. BANKRUPTCY, 1. BILLS AND NOTES, 1. CONSTITUTIONAL LAW, 10–14. CONTRACT, 7. INSURANCE, 13. MUNICIPAL CORPORATION. PARTNERSHIP, 5. RECEIVER, 8. REMOVAL OF CAUSES, 1.

1. An ouster of a corporation *de facto* from its franchises, is no defence to a suit by a creditor against stockholders to enforce payment of their stock subscriptions. *Rowland* v. *Maeder Fur. Co.*, 617.

2. Corporations *de facto* and *de jure* stand on the same footing as respects their liability to creditors. *Id.*

3. Where a corporation unjustifiably refuses to make a transfer on its books, an actual transfer by delivery of the certificate is good as against an attaching creditor without notice. *Merchants' Nat. Bank* v. *Richards*, 344.

4. A statutory provision that no stockholder indebted to a bank shall transfer his stock may be waived by the cashier, notwithstanding the fact that he is a member of the firm which owns the stock, if there be no collusion. *Cecil Nat. Bank* v. *Watsontown Bank*, 545.

5. Such lien may be lost by a transfer of the stock on the books of the bank without the issuing of a certificate to the transferree. *Id.*

6. A creditor to whom stock had been transferred on the corporation books as collateral security, subsequently on payment of the debt endorsed the certificate to another creditor at the request of the debtor. Before this transfer was made on the books the stock was attached as the property of the debtor. The by-laws provided that "all transfers of stock shall be made in the books of the company." *Held*, That the attachment could not be sustained. *Beckwith* v. *Burroughs*, 200.

7. An executory contract between a manufacturing corporation and one of its stockholders for the purchase of the latter's stock by the corporation, cannot be enforced. *Coppin* v. *Greenlees & Rawson Co.*, 618.

8. It is beyond the powers of a railroad, or of a corporation chartered for the manufacture and sale of musical instruments, to guarantee the payment of the expenses of a musical festival. *Davis* v. *Old Colony Railroad Co.*, 545.

9. The fact that the use of a wharf by a railroad company as a public wharf is *ultra vires*, is no ground for an injunction at the suit of one whose only interest is that as lessee of an adjoining public wharf he will be injured by the competition in business. *New Orleans, M. and T. Railroad Co.*, v. *Ellerman*, 618.

10. A railroad company has an implied power to borrow money, and may do so by a perpetual loan secured by irredeemable bonds sold at a discount, and entitling the holder, upon a contingency, to a share in the profits in addition to interest. *Phila. and Reading Railroad Co.*, v. *Stichter*, 713, *and note.*

11. Where the bank account of a corporation is overdrawn upon checks signed by the president and secretary, there is a presumption in favor of the officers' authority which will support an action against the corporation in the absence of affirmative proof of the want of such authority. *Mahoney Min. Co.* v. *Anglo-California Bank*, 100.

12. General presumption as to authority of officers of corporations. *Id., note.*

13. A bill by a stockholder against the corporation and a third party to protect the interests or enforce the rights of the corporation will only lie in cases of unauthorized, illegal or oppressive action of the board of directors or of a majority of the stockholders in violation of the rights of the other stockholders. *Hawes* v. *Contra Costa Water Co.*, 252.

14. Complainant must allege in the bill his ownership of stock, his efforts to obtain redress and the *bona fide* character of the suit. *Id.*

15. A director may become a creditor of the corporation, but is not thereby divested of his responsibility as a director, and a sale under a mortgage held

CORPORATION.
by him will be set aside upon slight evidence of *mala fides*. *Hallam* v. *Indianola Hotel Co.*, 443, *and note.*
16. The director of a building association who has executed a mortgage to it for a loan cannot, in foreclosure proceedings, set up as a defence a secret agreement with the other directors that the loan was to be repaid by full payment of his shares of stock. *Pangborn* v. *Citizens' Building Association*, 618.
17. An agreement to guarantee the stock of another corporation is not a guarantee to the individual purchasers of the stock of the other corporation, although a memorandum of it is endorsed on the certificates. *Flagg* v. *Manhattan Railway Co.*, 775, *and note.*
18. A release of such guarantee by the directors of the corporation to which it was made is valid if made in good faith. *Id.*
19. Such release will not be set aside because some of the directors voting were also stockholders in the guarantor corporation, if without their votes a majority of the directors present voted for the release. *Id.*
20. Where the amount of the capital stock of a corporation is limited by charter, all stock issued in excess of the limit is void. *Scovill* v. *Thayer*, 481.
21. A holder of such stock is not entitled to the rights or subject to the liabilities of a holder of authorized stock. *Id.*
22. An agreement between a corporation and its stockholders that no further assessments shall be made on its stock which is not fully paid, is void as to creditors, but proceedings in the interest of the creditors to set aside the agreement is a prerequisite to suits by the assignee in bankruptcy of the corporation to recover the unpaid subscriptions. *Id.*
23. Where a question concerning the right of the member of an order to benefits has been decided by a tribunal of the order to which the member referred it in a method prescribed by the by-laws, such decision is a bar to an action at law for the same cause. *Osceola Tribe* v. *Schmidt*, 482.
24. Assets of a corporation are a trust fund for payment of its debts, and may be followed into the hands of a purchaser with notice, and a purchase by a director is presumed to be with notice. *Jones* v. *Arkansas Mechanical & Agricultural Co.*, 749.
25. Such purchase is not void but voidable. *Id.*
26. The assets of an insolvent corporation are not turned into a trust fund by the mere knowledge of its officers of its insolvency. *Comfort* v. *McTeer*, 70.
27. Where after knowledge of such insolvency the officers entered a credit to a customer which was justified by the course of dealing with him, a subsequent assignee of the bank for the benefit of creditors is bound thereby. *Id.*
28. DISFRANCHISEMENT FROM PRIVATE CORPORATIONS, 689.

CORPSE.
1. Cannot be disposed of by will, and no action lies against the executors for the expenses of cremation performed under directions in the will. *Williams* v. *Williams*, 508, *and note.*
2. It is the duty of executors to bury the body, and they are entitled to its possession, and possession obtained for the purpose of cremation under a license given with the understanding that the body was to be buried is illegal. *Id.*

COSTS. See ATTORNEY, 11. ERRORS AND APPEALS, 11. JUDGMENT, 4. TRUST, 3. WILL, 8, 16–18, 21.
1. Where one *cestui que trust* has carried on litigation for the common benefit he will be allowed out of the trust fund his counsel fees and legal expenses, but not his private expenses. *Trustees of Int. Imp. Fund* v. *Greenough*, 680.
2. The practice of allowing evtravagant counsel fees and commissions out of trust funds disapproved. *Id.*

CO-TENANTS. See RECEIVERS, 9.

COUNTY. See MUNICIPAL CORPORATIONS.

COURTS. See MUNICIPAL BONDS, 1.
Jurisdiction of inferior courts can be collaterally attacked. *Culver's Appeal*, 268.

COURT MARTIAL. See HABEAS CORPUS, 2.

COVENANT. See ACTION, 3. JUDICIAL SALE, 2.

No special form of words is necessary in order to charge a party with covenant, but it must appear from the whole instrument that there was an agreement on the part of the person sought to be charged to do or not to do some act. *Hale* v. *Furch*, 200.

CRIMINAL LAW. See ERRORS AND APPEALS, 12. LIBEL, 1, 2.

I. *Generally.*

1. When an alibi is relied upon, the burden is on defendant to establish it by a preponderance of the evidence. *State* v. *Hamilton*, 808.

2. The right of a prisoner to appear in person and defend may be waived by him, and if he voluntarily abandons the court room, and refuses to appear, the court is under no obligation to stop the trial. *Sahlinger* v. *People*, 482.

3. A confession, not induced by promises or threats, is admissible notwithstanding that it was obtained by artifice by the officer in charge of the prisoner. *State* v. *Phelps*, 482.

4. A defendant may be convicted of violation of the Sunday law by proof of the acts of his employee done with his knowledge and acquiescence. *Seaman* v. *Commonwealth*, 245.

5. Liability of principal for criminal acts of agent. *Id.*, *note.*

6. Report made by witness of defendant's statements at the inquest, and used by him to refresh his memory on the trial, is not admissible in evidence. *Commonwealth* v. *Jeffs*, 808.

7. Mere proximity of a husband, not actually present, will not raise a presumption that the wife acts under his coercion. *State* v. *Shee*, 546.

8. Any inference of coercion from such proximity is a question of fact. *Id.*

9. One who has formed an opinion is prima facie incompetent as a juror and cannot be accepted, until it appears that his opinion was from mere newspaper statements or rumor and that it will not prevent him from rendering an impartial verdict. *McHugh* v. *State*, 618.

10. It is not an abuse of the court's discretion to admit a juror who says that he has formed an opinion on rumor, which it would require evidence to remove, but that he has no bias and can try the case impartially. *Casey* v. *The State*, 418.

11. An accomplice who is not indicted, or is separately indicted, is a competent witness, though convicted, if he has not been sentenced. *Id.*

12. The declarations of an alleged accomplice, in the absence of the defendant, are not admissible against him until other evidence than that of the principal is produced implicating the declarant in the offence. *Id.*

13. The wife of one who is jointly indicted with defendant is not a competent witness for him. *Id.*

14. Requiring the jury to retire during the argument of instructions is a matter of practice within the discretion of the court. *Id.*

15. A new trial will not be granted upon after discovered evidence which might by reasonable diligence have been had on the trial, or which is in its nature impeaching only. *Tobin* v. *People*, 200.

16. The rules with regard to petitions for new trials, for newly discovered evidence in civil cases, apply to criminal cases, although in capital cases the court will be more inclined to give the petitioner the benefit of any doubt raised by the new evidence. *Hamlin* v. *The State*, 200.

17. It is one of these rules that the evidence must be sufficient to change the result if a new trial should be had. *Id.*

18. THE RIGHT TO COUNSEL IN A CRIMINAL CASE, 625.

II. *Assault.*

19. In an indictment for assault and battery, the act must be alleged to have been done unlawfully, and such allegation is not supplied by an allegation of rude, insolent, or angry touching, but it is not necessary that the word "unlawful" should be used if another term of the same import is employed. *State* v. *Smith*, 193, *and note.*

III. *Bribery.*

20. Bribery at a municipal election is a misdemeanor punishable at common law. *State* v. *Jackson*, 418.

CRIMINAL LAW.

21. An unsuccessful attempt to bribe the elector will subject the offender to indictment. *State* v. *Jackson*, 418.

IV. *Counterfeiting.*

22. An indictment on sect. 5431, U. S. Rev. Stat., alleging that defendant, feloniously and with intent to defraud, did pass, utter and publish a falsely made, forged, counterfeited and altered obligation of the United States, but not further alleging that the defendant knew it to be false, forged, counterfeited and altered, is insufficient even after verdict. *United States* v. *Carll*, 680.

V. *Larceny.*

23. It is larceny to obtain by threats payment of an excessive charge for work. *Regina* v. *Lovell*, 705, *and note.*

24. A pledgee, obtaining possession of the thing pledged from the pledgor, by deception and false pretence, with the felonious design to deprive the latter of his security, is guilty of larceny. *Bruley* v. *Rose*, 814.

25. When things attached to the realty are detached therefrom they become the subject-matter of larceny even by the person detaching them. *Beal* v. *State*, 268.

26. Difference between larceny and trespass. *Id.*

27. Evidence of general belief among colored people that property found belongs to the finder, no defence to prosecution under statute making the conversion of such property larceny. *State* v. *Welch*, 71.

28. The possession of property recently stolen is prima facie evidence of guilt, unless the surrounding circumstances create a reasonable doubt. *Smith* v. *The People*, 739, *and note.*

29. The recent possession of stolen property authorizes a conviction, unless the presumption of guilt arising therefrom is overcome by other facts. *State* v. *Kelly*, 809.

30. But defendant is only required to introduce evidence which creates a reasonable doubt. *State* v. *Richart*, 809.

VI. *Murder.*

31. Under a statute providing that wilful, deliberate, malicious and premeditated killing shall be murder in the first degree, evidence that the accused was intoxicated at the time of the killing is competent upon the question whether he was capable of deliberate premeditation. *Hoft* v. *People*, 482.

VII. *Trespass.*

32. It is not a misdemeanor for one to break a partition fence between his lot and another's. Nor is it a trespass to knock off the plank added to it by the other; but destruction of such fence would be a trespass. *Drees* v. *The State*, 344.

CUSTOM. See COMMON LAW, 1.

1. A general custom that a broker may pledge his customers' stock is valid, and so also is a custom to sell without notice upon a fall of the stock in value below a price which would reimburse the broker. *Vanhorn* v. *Gilbough*, 171.

2. Effect of stock exchange customs upon non-members. *Id., note.*

3. Evidence of, inadmissible when contrary to express provision of contract. *Hackley* v. *Headley*, 109.

DAMAGES. See ADMIRALTY, 5, 13; EQUITY, 6; ERRORS AND APPEALS, 19; HUSBAND AND WIFE, 26; MALICIOUS PROSECUTION, 5, 11, 17, 18; PATENT, 21; SLANDER; TELEGRAPH, 7; TROVER, 4; WATERS AND WATERCOURSES, 2.

1. The measure of damages for breach of contract to convey land if without the fault of the vendor, is the consideration paid with interest, but if the breach occurs through his fault, the value of the land, if greater than the consideration, may be recovered. *Yokom* v. *McBride*, 546.

2. Where the damages for breach of contract must necessarily be incapable of estimation, as *e. g.*, damages for breach of a contract not to engage in a certain business for a limited time, a sum agreed upon by the parties is liquidated damages and not a penalty. *Newman* v. *Wolfson*, 809.

DAMAGES.

3. In an action on a warranty of seed, prospective profits on the land planted are not recoverable. *Butler* v. *Moore*, 483.

4. Beyond the payment of interest a city is not liable to a creditor for his pecuniary embarrassment caused by its failure to meet its obligations. *London* v. *Taxing Dist. of Shelby County*, 680.

5. A railroad employee, injured by the negligence of the company, may recover general damages on account of pain, physical injury and depreciation of power to labor, without proof of the value of his labor. *Georgia Southern Railroad Co.* v. *Neal*, 483.

6. In an action for the wrongful ejection of a passenger from the cars of a railroad, damages are recoverable for injuries caused by the act of plaintiff in walking to the next station, if such walking was rendered necessary by the ejection and was not negligent. *Brown* v. *C. M. and St. Paul Railroad Co.*, 418.

7. In an action for personal injuries whereby plaintiff was prevented from conducting his business, evidence of the profits of such business is inadmissible. *Bierbach* v. *Goodyear Rubber Co.*, 419.

8. In an action for an injury to an animal resulting in death, evidence is inadmissible as to the value of the use of the animal between the time of injury and the time of death, and of the value of plaintiff's services in taking care of it, and where a verdict necessarily includes such items it is excessive. *Page* v. *Town of Sumpter*, 201.

DEBTOR AND CREDITOR. See CORPORATION, 6. HUSBAND AND WIFE, 27. INSOLVENCY. LIMITATIONS, STATUTE OF, 8. PARTNERSHIP, 14. PATENT, 1, 2. UNITED STATES COURTS, 4, 6.

1. The retention of personal property by a vendor after sale is, as against his creditors, presumptive but not conclusive evidence of fraud. *Mead* v. *Gardiner*, 138.

2. Where a farmer sells a horse to an employee who continues to keep it on the farm, paying a certain sum for its keep, but taking care of it himself, there is no such change of possession as would render the sale valid as to creditors. *Hull* v. *Sigsworth*, 268.

3. By a contract between A. and B., all the colts thereafter foaled by certain mares sold by B. to A., and kept in B.'s stables under A.'s care, were to belong to A. *Held*, 1. That a valid sale could be made of the colts before they were foaled. 2. That the question of retention of possession by B. could not apply to them, as they were not in existence when the mares were sold to A. and the contract made. 3. That it was not important, upon a question between A. and the creditors of B. as to the title to the colts, whether there had been a legal and visible change of possession as to the mares. *Hull* v. *Hull*, 201.

4. A sale on condition that the title shall not pass until payment, is valid as against creditors, and is not invalidated by the fact that the property will be consumed in the use, nor by a power of sale given to the vendee. *Lewis* v. *McCabe*, 217.

5. Distinction between bailments and conditional sales. *Id.*, *note*.

6. A voluntary conveyance may be set aside by subsequent creditors upon proof of an intention to defraud them, but the burden of proof is upon them to show such intent. *Ingram* v. *Heather*, 483.

7. Transfer of land by a debtor in consideration of money advanced to him to pay his creditors, and upon the faith of a composition and receipt by such creditors is valid as against them, though they are never paid. *Kuhn* v. *Weil*, 71.

8. A subsequent creditor seeking to impeach a conveyance, must show actual fraud or that there are debts still unpaid. *Toney* v. *McGehee*, 750.

9. Fraud is not presumed, and circumstances of mere suspicion leading to no certain results are not sufficient proof. *Id.*

10. A mortgage made to a creditor to defraud other creditors, and kept off of the record in order to give the mortgagor a fictitious credit, is void at common law. *Blennerhasset* v. *Sherman*, 750.

11. Such mortgage is void under the bankrupt law, although executed more than two months before the filing of the petition. *Id.*

DEBTOR AND CREDITOR.

12. It is constructively fraudulent for one partner in a firm largely indebted, to make a voluntary conveyance of his individual property. *Barhydt* v. *Perry*, 755.

13. Subsequent creditors whose means have been used to pay existing debts, may avoid such conveyance. *Id.*

14. To render a conveyance fraudulent it is not necessary to trace fraudulent knowledge to the grantee. *Weir* v. *Day*, 750.

15. Conveyance made to avoid claim for tort may be set aside as fraudulent. *Id.*

16. Creditor not bound by a composition with the debtor obtained by fraudulent concealment by the latter of his property, and false representation as to his means. *Ackerman* v. *Ackerman*, 681.

17. Acceptance by trustee of assignment for benefit of creditors if made before the filing of a bill attacking the assignment, enures to the benefit of creditors accepting subsequent to the bill. *Nailer* v. *Young*, 71.

18. The same effect might, perhaps, result from the legal presumption of the acceptance by beneficiaries of an assignment in their favor. *Id.*

19. An assignment for the benefit of creditors which authorizes the assignee to sell at public or private sale, buy in the premises, resell without responsibility for loss and also to mortgage, and from the proceeds to pay first the creditors secured by mortgage and then the other creditors, is valid. *Waldron* v. *Wilcox*, 546.

20. Certificates of membership in a board of trade are property, and may be subjected to the payment of debts by a creditor's bill. *Smith* v. *Barclay*, 408, *and note.*

21. Where one orders a chattel to be made, though he pays the whole price in advance, he acquires no title until it is finished and delivered, unless a contrary intent is expressed, and even when such intent is expressed, the chattel is open to attachment by the creditors of the vendor. *Shaw* v. *Smith*, 201.

22. A creditor having no lien by attachment, levy or otherwise on his debtor's property, cannot maintain an action on the case against third persons for conspiring to defeat his claim by receiving from the debtor fictitious mortgages of his personal property. *Klous* v. *Hennessey*, 137.

DECEDENTS' ESTATES. See ADVANCEMENT. EXECUTORS. HUSBAND AND WIFE, 22, 23. LIFE TENANT.

An heir who, believing the estate solvent, receives from the executrix land devised to him and makes valuable improvements thereon, is liable on the subsequent insolvency of the estate only for the value of the land without the improvements. *Gillespie* v. *Murphy*, 750.

DECEIT. See FRAUD, 1–3.

DECREE. See HUSBAND AND WIFE, 4. MORTGAGE, 8, 9. PRACTICE, 3.

DEED. See ACKNOWLEDGMENT. LUNATIC, 4, 5.

1. Delivery to a stranger for delivery to the grantee will pass the title, but recording without the knowledge of the grantee will not. *Byars* v. *Spencer*, 268.

2. Where a father executes and acknowledges a deed to two minor children, but retains it in his own possession and declines to have it recorded, there is no sufficient delivery. *Id.*

3. Delivery of deed to husband of grantee with intent to pass the title vests the property in the grantee although made without her knowledge. *Parker* v. *Parker*, 419.

4. Monuments established by a surveyor at the time of survey will always prevail over written descriptions. *People* v. *Stahl*, 268.

5. Any description for purposes of taxation by which the land may be identified by a competent surveyor with reasonable certainty, either with or without extrinsic evidence, is sufficient. *Id.*

6. A grantee who has accepted a deed poll cannot, in the absence of fraud, show by parol evidence that a certain agreement therein was inserted without his knowledge or authority. *Muhlig* v. *Fiske*, 269.

DEED.

7. A conveyance made in consideration of the support of parents will be set aside upon proof of abandonment of the contract of support. *Jewell* v. *Reddington*, 750.

8. A conveyance in trust to have and to hold the same as tenants in common so long as they both shall live, and from and after the death of either of them, then unto the survivor so long as she shall live and no longer, or so long as they both shall remain unmarried; and from and after the marriage of either of them, then unto the one remaining unmarried, so long as she shall live and no longer is not against the policy of the law and is valid. *Arthur* v. *Cole*, 344.

9. Of two inconsistent descriptions, the grantee may elect the one most favorable to him. *Sharp* v. *Thompson*, 71.

10. Extrinsic evidence of the state of the property at the time of the execution of the deed is admissible to aid in the construction of a doubtful description. *Whitney* v. *Robinson*, 137.

11. The entry of the grantee, and the making of fences and improvements by him, with the acquiescence of the grantor, constitutes a practical construction of the deed binding on the parties. *Id.*

DELIVERY. See DEED, 3.

DEMURRER. See EQUITY, 18.

DESCENT.

1. Children of the same mother, whether legitimate or illegitimate, may transmit an inheritance to collateral relatives on the mother's side. *Gregley* v. *Jackson*, 750.

2. Laws of inheritance may be changed at will during the life of a person without violating any vested right in his expectant heirs. *Id.*

DEVISE. See WILL.

DISCOVERY. See UNITED STATES COURTS, 4.

DIVIDENDS. See LIFE TENANT.

DIVORCE. See HUSBAND AND WIFE, I.

DOMICILE.

One leaving Boston for an indefinite stay in Europe, with the design of returning to a new domicile in the United States, and who while in Europe fixes upon such new domicile, nevertheless retains his domicile in Boston for the purposes of taxation during his stay in Europe. *Borland* v. *City of Boston*, 809.

DONATIO CAUSA MORTIS. See GIFT, 5, 6.

DURESS.

1. Taking advantage of a party's financial embarrassment to obtain a settlement for a less sum than is due is not a duress of goods. *Hackley* v. *Headley*, 109.

2. What constitutes duress. *Id.*, *note*.

3. A father may avoid a mortgage which he has been induced to sign by threats of the prosecution and imprisonment of his son. *Harris* v. *Carmody*, 269.

4. A married woman's deed, duly acknowledged, will not be set aside for duress, except on the clearest evidence. *Linnenhemper* v. *Kempton*, 751.

EASEMENT.

1. Will not arise by prescription where the use has been habitually interrupted at the pleasure of the owner of the servient tenement. *Kirschner* v. *West. and At. Railroad Co.*, 269.

2. The same rules of law apply to subterranean rights of way as to those upon the surface. *Pomeroy* v. *Buckeye Salt Co.*, 260.

3. The owner of coal lands, through which another has a subterranean right of way, may construct an entry crossing such way if he does not interfere with its use. *Id.*

4. The appropriation of part of a way by the owner of one of the dominant

EASEMENT.
tenements is an abandonment of his easement in the whole way. *Steere* v. *Tiffany*, 809.

EJECTMENT.
Where two contestants voluntarily divide the profits of land between them one cannot, in a subsequent action of ejectment against the other, recover such profits. *White* v. *Rowland*, 270.

ELECTION. See DEED, 9.
Mere irregularities, not fraudulent and not affecting the result, will not justify the rejection of the entire poll. *Hodge* v. *Linn*, 71.

EMINENT DOMAIN. See CONSTITUTIONAL LAW, III.

ENCUMBRANCE. See MORTGAGE.

EQUITY. See ACTION, 2, 3; CORPORATION, 13, 14; INJUNCTION; INSURANCE, 1; LIS PENDENS, 1; MORTGAGE, 8, 9, 14–17; PATENT, 1, 2, 11; SPECIFIC PERFORMANCE; TAXATION, 14.
1. Will not decree a judgment lien to be invalid on the ground of want of legal notice, where there has been actual knowledge of the action, unless a meritorious defence be shown. *Gifford* v. *Morrison*, 270.
2. Has no jurisdiction to entertain a bill to compel the corporate authorities of a town to issue and deliver its bonds in pursuance of a vote to aid in the construction of a railroad. *Chicago and V. Railroad Co.* v. *Town of St. Anne*, 202.
3. Where no discovery is sought a bill cannot be maintained by the owners against the master of a vessel sailing her on shares, merely to obtain an account. *Bird* v. *Hall*, 419.
4. Affirmative relief cannot be granted to respondent upon his answer without a cross bill. *White* v. *White*, 681.
5. Where in a case cognizable at law the ground on which a court of equity has taken jurisdiction fails, the court will dismiss the bill. *Mitchell* v. *Dowell*, 751.
6. A court which has issued an injunction has, on the final disposition of the cause, power to make a decree granting or denying damages on account thereof. *Russell* v. *Farley*, 651.
7. Such power may be exercised by a federal court to which the case has been removed, although the state courts would not have possessed it. *Id.*
8. *Semble.* The court may also assess the amount of the damages. *Id.*
9. The decision of the court on the question of damages will not be reversed, except in a very clear case of error. *Id.*
10. Cross bill will not lie where there is no connection between the demands or the parties. *Comfort* v. *McTeer*, 72.
11. Where a debtor absconds leaving no legal assets, his creditors may at once proceed in equity against his equitable assets, and if their claims are specially fit for legal cognizance, the court may submit them to a jury on issue. *Merchants' Nat. Bank* v. *Paine*, 810.
12. Has jurisdiction in case of abuse of children to take them out of their parent's custody and appoint a guardian, and such jurisdiction is not taken away by a like power conferred on the probate courts. *State* v. *Grigsby*, 803.
13. The better practice is to bring such bill in the name of the infant by his next friend, but the bill will not be dismissed because brought in the name of the state. *Id.*
14. Where the facts which render an assessment upon land invalid, are not matter of record, an action to prevent a cloud upon the title, by setting aside the assessment, may be maintained either by the present owner or by one who has conveyed it by warranty deed. *Pier* v. *Fond du Lac County*, 202.
15. In such an action the grantee, though a proper, is not a necessary party. *Id*
16. The rule that a bill to remove a cloud upon a title lies only where the complainant is in possession or the land is vacant, does not apply where a deed is sought to be set aside for fraud. *Booth* v. *Wiley*, 483.

EQUITY.

17. As to bills of review relating to errors on the face of the decree, the rule requiring previous performance of the decree does not apply. *Davis* v. *Speiden*, 72.

18. Presumption of payment of mortgage from lapse of time may be raised by demurrer. Any circumstances which repel such presumption must be averred in the bill. *Olden* v. *Hubbard*, 72.

19. Pleas alleging conclusions of law, or which are not in accordance with the rules, may be disregarded. *Central Nat. Bank* v. *Conn. Mut. Life Ins. Co.*, 72.

20. The want of a replication cannot be assigned for error upon appeal after hearing on the merits. *Id.*

ERRORS AND APPEALS. See ADMIRALTY, 3, 4. BILLS OF REVIEW. EQUITY, 9, 20. HUSBAND AND WIFE, 9. JUDGMENT, 6, 8. JURY, 2. PATENT, 19. TRUST, 2.

1. Upon a joint bill filed by the owners of separate properties to restrain the collection of assessments against them, the jurisdiction of the appellate court depends upon the amount of the largest individual assessment and not upon the aggregate amount of such assessments. *Russell* v. *Stansell*, 483.

2. In a contest between the creditors of an estate, the jurisdiction of the appellate court is determined by the aggregate amount of the claims of creditors interested in the result of the litigation, and not by the amount of claims provable against the estate. *Chatfield* v. *Boyle*, 419.

3. A judgment of reversal is effective notwithstanding the death of the plaintiff in error during the pendency of the proceedings in error. *Williams* v. *Englebrecht*, 419.

4. Record cannot be returned in admiralty case to supply omission of finding of fact unless such omission was the fault of the court. *Winslow* v. *Wilcox*, 72.

5. It is not a valid objection to an appeal from a District Court of the United States to a Circuit Court that the former court allowed it without writing, in violation of a rule of that court. *Winslow* v. *Wilcox*, 810.

6. Nor will a rule that the appeal and record should be delivered to the Circuit Couurt in twenty days, prevent the latter court from entertaining the appeal, although the rule is not complied with. *Id.*

7. A cross-appeal must be prosecuted as if no other appeal was pending. *Id.*

8. On appeal from a District to a Circuit Court of the United States, the district judge cannot vote, and therefore the case cannot be brought to the Supreme Court on a certificate of division of opinion. *United States* v. *Emholt*, 810.

9. An information for a forfeiture under the internal revenue laws cannot be brought from the Circuit to the Supreme Court. *Id.*

10. Under sect. 693 Rev. Stat., final judgments of Circuit Courts in civil actions where there has been a division of opinion of the judges are only reviewable on writ of error or appeal. The Act of 1802 was suspended by the Act of July 1st 1872. *Banking House* v. *Trustees*, 72.

11. An appeal lies from a decree in equity for costs where they are directed to be paid out of a fund in the control of the court. *Trustees of Int. Imp. Fund* v. *Greenough*, 681.

12. Where a municipal ordinance prohibits that which is a crime or misdemeanor at common law, and prescribes a penalty by fine with imprisonment on default of payment, an action to recover such penalty is *quasi* criminal, and no appeal lies. *President, &c., of Plattsville* v. *McKernan*, 618.

13. Where the evidence tends to make out the plaintiff's case, its effect is for the jury, and the appellate court will not review or weigh it. *Cuddy* v. *Horn*, 302.

14. An appeal from a final decree brings before the appellate court all interlocutory orders involving the merits. *Clair* v. *Terhune*, 618.

15. On appeal from the final decree, the appellate court will decide whether a decree of reference, prescribing the limits of the accounting, be right. But items clearly within the limits of the reference, not allowed by the master,

ERRORS AND APPEALS.
where exceptions to the report have not been filed, will not be considered. *Clair* v. *Terhune*, 618.

16. The limitation of two years prescribed by sect. 1008 Rev. Stat., applies to writs of error to state courts. *Cummings* v. *Jones*, 345.

17. A reversal will not be granted because the verdict was only one-half what it should have been if any recovery at all was had. *Alderman* v. *Cox*, 345.

18. An error in admitting the evidence of an incompetent witness in a chancery case is no ground of reversal when the record contains other evidence which is competent and sufficient. *Ritter* v. *Schenck*, 270.

19. On error to reverse a judgment in damages for breach of contract where the damages are excessive, the court may, in certain cases, affirm the judgment upon a remittitur of the excess being filed. *C. & M. Railroad Co.* v. *Himrod Furnace Co.*, 270.

20. The erroneous sustaining of a demurrer to a replication to one of several defences in the answer, requires the reversal of a final judgment for the defendant which is not clearly shown by the record to have proceeded upon other grounds. *Moores* v. *Citizens' Nat. Bank*, 345.

ESTOPPEL. See ACKNOWLEDGMENT, 3. AGENT, 1. BILLS AND NOTES, 5. INSURANCE, 8. MASTER AND SERVANT, 4. MORTGAGE, 13, 18. PLEDGE, 1. RECEIVER, 7. SHERIFF'S SALE, 4.

1. An admission of indebtedness by the garnishee to the attaching creditor prior to the attachment does not estop him from afterwards denying such indebtedness although it is evidence against him. *Warder* v. *Baker*, 419.

2. The customer of a stock broker admitting that he never intended to pay for stock bought is estopped from complaining of want of notice of the sale of the stock. *Van Horn* v. *Gilbough*, 171.

EVIDENCE. See ACKNOWLEDGMENT, 4. ADVANCEMENT. ASSUMPSIT. BILLS AND NOTES, 8, 17. CONTRACT, 3, 7. COPYRIGHT. CRIMINAL LAW, 1, 3, 6, 11–13, 27, 28, 30, 31. CUSTOM, 3. DAMAGES, 7. DEED, 6, 10. ESTOPPEL, 1. EXECUTION, 2. HUSBAND AND WIFE, 20. LIMITATIONS, STATUTE OF, 6. MALICIOUS PROSECUTION, 13. MORTGAGE, 3. MUNICIPAL CORPORATION, 9. NAME. PARENT AND CHILD, 3. PARTNERSHIP, 7, 25. PAYMENT, 1. SALE, 13. TELEGRAPH, 1–3. UNITED STATES COURTS, 1. WILL, 9, 14. WITNESS.

1. When a contract is executed in duplicate, both copies are originals, and one may be offered without notice to produce the other. *Totten* v. *Bucy*, 484.

2. A merchant's account-book was offered in evidence; it appeared that the memorandum of sales was made as they took place, on a little pass-book or blotter; that at the close of each day, or at most with a delay of but a day or two, these memoranda were copied into the journal or account-book offered in evidence; it also appeared that these pass-books or blotters had been lost or destroyed, and the party who made the copies in the account-book testified that they were correct. *Held*, no error in admitting such book of account. *Rice* v. *Simpson*, 137.

3. Where a written contract is susceptible of two constructions, one fair and reasonable, and the other so highly favorable to the party preparing the writing that it was not likely to be knowingly accepted by the other party, parol testimony is admissible of the prior negotiations and the situation and admissions of the parties. *Mason* v. *Ryns*, 136.

4. A written contract purporting to contain the whole contract cannot be varied or amplified by parol evidence. *Heil* v. *Heller*, 202.

5. A return to a writ of replevin that the goods were found in the town of H. is not evidence that they were found there. *Parker* v. *Palmer*, 202.

6. A note of the ancestor is not admissible in a suit revived against the heirs without proof of its execution. *Davis* v. *Smith*, 159.

7. In suit for damages for personal injury, evidence of an attempt by defendant to corruptly influence one of plaintiff's witnesses is admissible. *Chicago City Railway Co.* v. *McMahon*, 681.

8. Parol evidence admissible to show that because of the fraud of a party to

EVIDENCE.
an instrument it does not express the real agreement. *Hopkins* v. *Hawkeye Ins. Co.*, 748.
9. Contract created by endorsement of note cannot be varied by parol proof. *Martin* v. *Cole*, 73.
10. The law of a sister state is a question of fact to be proved by evidence. In the absence of such evidence it will be presumed that the common law is in force. *Meyer* v. *McCabe*, 70.
11. Parol evidence admissible to show that mortgage has been discharged or to explain or contradict the consideration clause. *Baile* v. *St. Joseph F. & M. Ins. Co*, 37.
12. An original *fi. fa.* may be taken out of court and used in evidence. *Thomas* v. *Parker*, 811.
13. A *fi. fa.* from a federal court will be recognised by the state courts without other than intrinsic proof. *Id.*
14. Whether a witness is qualified to testify as an expert is a preliminary question for the judge, whose decision is conclusive, unless it appears upon the evidence to have been erroneous. *Perkins* v. *Stickney*, 816.
15. A treasurer of a mill corporation, whose only knowledge of the quality of the coal burned in his mill is derived from the weekly reports of his engineer, is not qualified as an expert to testify as to such quality, although he has bought all the coal used in the mill for several years. *Id.*
16. The court will take judicial notice of the county in which an incorporated town is situated, and of the fact whether such county is under township organization. *People* v. *Suppiger*, 681.
17. The printed journals of the legislature, published by legal authority, are competent evidence of legislative proceedings. *Amoskeag Nat. Bank* v. *Ottowa*, 681.
18. Portions of medical books cannot be read as evidence, although such books be shown by expert testimony to be standard works. *Stilling* v. *Town of Thorp*, 619.
19. Non-experts must state grounds and facts sufficient to justify the expression of an opinion. *Kerby* v. *Kerby*, 484.
20. Persons in the service of one alleged to be infirm in mind, and constantly about such person, and having business dealings with him, are competent to express an opinion respecting his mental condition. *Id.*
21. EXPERT TESTIMONY—SCIENTIFIC TESTIMONY IN THE EXAMINATION OF WRITTEN DOCUMENTS, ILLUSTRATED BY THE WHITTAKER CASE, &c., 425, 489.

EXECUTION. See EVIDENCE, 12. INJUNCTION, 3, 4. PARTNERSHIP, 2, 4. SHERIFF'S SALE.
1. Property levied upon by a constable under a valid execution is not subject to levy by any other officer. *Jones S. & P. Co.* v. *Case*, 138.
2. A levy on real estate undisposed of is not *prima facie* evidence of satisfaction. *Overby* v. *Hart*, 345.
3. That a *fi. fa.* has been levied on land, a claim interposed and dismissed and the *fi. fa.* ordered to proceed, will not prevent a levy on other realty or require the *fi. fa.* to proceed on the original levy. *Id.*
4. To make a valid levy the officer must do such acts as that but for the protection of the writ he would be liable in trespass. *Rix* v. *Silknitter*, 751.
5. The sheriff sells only the title of defendant and the real owner may maintain replevin or trover against the sheriff's vendee. *Reichenbach* v. *McKean*, 619.
6. A pledge may be sold on execution against the pawnor, but the sheriff's vendee takes subject to the lien of the pawnee. *Id.*
7. Exemptions must be strictly construed. *Pitard* v. *Carey*, 546.
8. One who does work on a public building under a contract is not an officer within a statutory exemption of the salary of an officer. *Id.*

EXECUTORS AND ADMINISTRATORS. See ATTACHMENT, 2. CORPSE. GIFT, 1. JUDICIAL SALE, 1. NOTICE, 2. SURETY, 6–8. WILL, 7, 22.
1. Where an administrator uses the funds of the estate, rendering no account thereof, he is chargeable with compound interest, and the failure to account raises a presumption of such use. *Camp's Creditors* v. *Camp's Administrators*, 484.

EXECUTORS AND ADMINISTRATORS.

2. An administrator may rightfully become the purchaser of the land of his intestate at a tax sale. *Stark* v. *Prown*, 270.

3. An executor who collects a large amount of money without his co-executor's knowledge, and gives a mortgage of his own lands to secure it, is not, by giving such mortgage, exonerated from liability to his co-executor. *Storms* v. *Quackenbush*, 138.

4. An administrator who signs a note describing himself as administrator, becomes, in the absence of an express stipulation to the contrary, personally liable. *Studebaker Bros. Man. Co.* v. *Montgomery*, 345.

5. Where a legacy is to be invested and not paid until the majority of the legatee, it is the duty of the executor to compound the interest by investing it as received. *Perrine* v. *Petty*, 138.

6. An executor who lends such fund to his co-executor on inadequate security, is liable for compound interest, and the fact that such investment is stated in his account in the Orphans' Court will not relieve him. *Id.*

7. Where an administrator deposits funds of the estate in his own name in bank, he is liable for a loss by the bank's failure, even though at the time of the deposit he informed the officers that the moneys were held in trust. *Williams* v. *Williams*, 619.

8. A power of sale does not authorize an executrix to mortgage the estate. *Gillespie* v. *Murphy*, 752.

9. An executrix cannot borrow money and charge the estate, and if she renews notes of the testator she makes them her personal obligations. *Id.*

10. But she may prove as creditor for sums borrowed and used for the estate, and the lenders may by cross bill be subrogated to her rights. *Id.*

11. Where on an administrator's account credit for a payment is disallowed, he is liable for interest on such sums from the date of payment. *Mount* v. *Van Nees*, 811.

12. That an executor fails to record a mortgage that had been given by him to the testator, and also claims credits which appear to be false, are sufficient grounds for requiring him to give security. *Bird* v. *Wiggins*, 811.

13. Upon an application to assess the damages on a judgment recovered against an administrator and his sureties, because of his failure to apply to the payment of the intestate's debts the proceeds of lands sold under an order of the Orphans' Court, *Held*, That as the administrator had authority to sell only the lands specified in the order of the Orphans' Court, his sureties are not liable for the proceeds of sale of any other lands, and that there can be no deduction in the administrator's favor because of his failure to exhaust the personal estate of the intestate in payment of his debts before applying the proceeds of the realty thereto. *In re Givens's Adm'r*, 138.

EXEMPTION. See EXECUTION, 7, 8. TAXATION, 18.

EXPERT. See EVIDENCE, 14, 15, 21.

EXPRESS COMPANY.

A foreign railroad company doing an express business is liable to a privilege tax imposed by a state upon express companies. *Memphis and Little Rock Railroad Co.* v. *State*, 752.

FENCE. See CRIMINAL LAW, 32.

FIXTURE. See CRIMINAL LAW, 25.

1. When actually or constructively annexed after the execution of a mortgage, fixtures cannot be removed without the consent of the mortgagee. *Wight* v. *Gray*, 484.

2. As between vendor and vendee the rule for determining what is a fixture, is construed strongly against the vendor. *Pratt* v. *Whittier*, 49.

3. Character of chattels attached to the freehold depends upon the agreement of the parties. *Id.*

4. Gas fixtures, range, tank, filter, window screens, &c., held upon the construction of a contract of sale to pass to the vendee as part of the realty. *Id.*

5. Character of gas fixtures, stoves and furnaces, &c. *Id., note.*

FOREIGN ATTACHMENT. See ATTACHMENT, 6.

FOREIGN JUDGMENT. See ATTACHMENT, 10. HUSBAND AND WIFE, 3.

FORFEITURE. See INSURANCE, 1–6. MASTER AND SERVANT, 2.

FORMER ADJUDICATION. See TAX, 4.

1. A suit brought after the maturity of a note to recover an instalment of interest and a recovery therein, is no bar to a subsequent action to recover the principal. *Dulaney* v. *Payne*, 270.

2. One not a party to an action, not notified of its tendency, having no opportunity to control the defence or take a writ of error, is not bound by the judgment. *Hale* v. *Finch*, 202.

3. The fact that a note stipulates that the principal shall become due on default in any payment of interest, will not in case of such default merge the interest with the principal, and a recovery in a suit for the interest will not bar a suit for interest subsequently accrued. *Wehrly* v. *Morfoot*, 682.

FRAUD. See ATTACHMENT, 12. CORPORATION, 15, 17. DEBTOR AND CREDITOR, 1–16, 22. LUNATIC, 5. PARTNERSHIP, 14. SALE, 12.

1. An action may be maintained by the buyer of a patent right against the seller for a false representation as to novelty, although by searching the records of the Patent Office the buyer might have discovered the fraud. *McKee* v. *Eaton*, 139.

2. Where the value of property depends upon future contingencies or developments, no action will lie for an expression of opinion as to it, however fallacious. *Gordon* v. *Butler*, 752.

3. *Semble*. For a false expression of opinion as to matters capable of accurate estimation, or by a person having special learning upon the subject, an action will lie. *Id.*

FRAUDS, STATUTE OF. See SPECIFIC PERFORMANCE, 6. TELEGRAPH, 4.

1. An agreement by the owner of a vessel to pay a lien thereon, for a debt incurred by a former owner, is not a promise to pay the debt of another within the statute. *Fears* v. *Story*, 271.

2. A guaranty by a debtor of the note of a third person given to his creditor, in payment of his debt, is not within the Statute of Frauds. *Eagle M. and R. Mach. Co.* v. *Shattuck*, 202.

3. If, upon the close of a partnership, one partner takes to his own use a portion of the assets whether choses in action or anything else, on an oral agreement to account to his co-partners for a definite share, the agreement is not within the statute. *Conger* v. *Cotton*, 423.

4. Where one agrees to satisfy his obligation to an estate, by distributing the sum he holds among its creditors, such agreement is not a promise to pay the debt of another within the statute. *Decuir* v. *Ferrier*, 139.

5. A verbal promise in the alternative to compensate a party by will, either in land or money, is within the statute. *Howard* v. *Brower*, 139.

6. Where the agreement sued on is within the statute, and it is fairly to be inferred from the petition that it is not in writing, the defence of the statute is available on demurrer. *Id.*

7. When a conveyance in trust is made voluntarily, and the only fraud alleged is in repudiating the agreement, it will not remove the case from the operation of the statute. *McClain* v. *McClain*, 811.

8. Where the terms of an agreement are evidenced by a writing sufficient to satisfy the statute, it will be binding notwithstanding the fact that the writing was intended only as instructions for a formal agreement to be prepared and signed. *Wharton* v. *Stoutenburgh*, 619.

9. August 20th an oral contract was made between A. and B., by which A. was to enter B.'s service for one year, A. to begin the term of service as soon as he could. A. began work August 27th. *Held*, that the contract was within the Statute of Frauds, being an oral contract not to be performed within a year. *Sutcliffe* v. *Atlantic Mills*, 546.

GARNISHMENT. See ATTACHMENT.

GIFT. See GUARDIAN AND WARD, 6.

1. Where stock stood in a testator's name on the books of the corporation, the facts that the certificate is found in the executor's possession and that the

GIFT.
testator gave him a power of attorney to receive and assign any dividend, are not conclusive evidence of a gift of the stock to the executor. *Smith* v. *Burnet*, 139.
2. The making of a deposit in a savings bank in the name of another without surrendering the book or the control of the fund, does not make the depositor a trustee for the person in whose name the deposit was made. *Northrop* v. *Hale*, 420.
3. A gift from a lady to her medical adviser is voidable only and may be ratified by the intentional adherence of the donor to it after the termination of the relation. *Mitchell* v. *Homfray*, 871.
4. Gifts by persons in confidential relations. *Id.*, *note.*
5. Property delivered to an agent with directions to deliver it to another in case of death, but to return it in case of recovery, is not a valid *donatio causa mortis*. *Walter* v. *Ford*, 684.
6. Whether a bank check can be the subject of a *donatio causa mortis*, *quære*. *Id.*

GUARANTY. See BILLS AND NOTES, 11, 21. CONTRACT, 11. CORPORATION, 17. FRAUDS, STATUTE OF, 2.
1. Notice of acceptance of guaranty is not necessary where it is made at the request of the creditor or for a valuable consideration, or is in form a bilateral contract. *Davis* v. *Wells*, 73.
2. Where a guaranty declares that the guarantor guarantees unconditionally at all times any advances, &c., to a third person, notice of demand of payment and the default of the debtor is waived, as well as notice of the amount of the advances. *Id.*
3. But a failure to give such notice, if required, would be a defence only to the amount of the damage actually caused. *Id.*
4. Contracts of guaranty are to be liberally construed. *Id.*

GUARDIAN AND WARD. See EQUITY, 12. MUNICIPAL BONDS, 4.
1. Where a guardian, who was also the father of the ward, never made any charge for maintenance, his sureties are not entitled to allowance therefor in a suit on the bond. *In re Walling*, 812.
2. The ward's omission to sue the surety for nine years after coming of age will not prevent his recovery. *Id.*
3. The approval of the probate court is not essential to the validity of a lease by a guardian. *Field* v. *Merrick*, 203.
4. A full settlement between guardian and ward, after the latter becomes of age, acquiesced in for more than four years, is prima facie binding. *Steadham* v. *Sims*, 346.
5. While the guardian should inform the ward of the condition of the estate, it is not necessary in all cases that he should make a detailed statement of the receipts, expenditures, debts, &c. *Id.*
6. The gift from a ward to the guardian is voidable, and the burden of proof is on the latter to show that it was freely and voluntarily made, and that the donor had competent and disinterested advice. *Wade* v. *Pulsifer*, 682.
7. The settlement of the guardian's account; the presence of the wards; their receipts; their expression of approval; their declarations that they did not regret the gifts; lapse of time; the death of the donee, and one of the donors, do not affect the result. *Id.*

HABEAS CORPUS.
1. An allegation that children are concealed by respondents in one or the other of two counties, is sufficient to give the courts of one of the counties jurisdiction, and it is no excuse to return that the children are in the other county, unless it is also alleged that they are beyond respondent's power. *Rivers* v. *Mitchell*, 812.
2. A prisoner under sentence of a court martial cannot be discharged under habeas corpus if the court martial had jurisdiction, and the sentence was one which it had power to pronounce. *Ex parte Mason*, 812.

HIGHWAY. See CONSTITUTIONAL LAW, 23, 24. MUNICIPAL CORPORATION, 7. NUISANCE. SHERIFF, 5.

HOMESTEAD.

Lien on a crop by a factor furnishing supplies is superior to the homestead right of the debtor's wife. *Cook* v. *Roberts*, 812.

HUSBAND AND WIFE. See ACKNOWLEDGMENT, 4. ATTORNEY, 3. CRIMINAL LAW, 7, 8, 13. LIMITATIONS, STATUTE OF, 10.

I. *Marriage, Divorce and Alimony.*

1. A statute prohibiting the guilty party from marrying after divorce has no extra-territorial effect, and the marriage of such party in another state is valid though made there to evade the prohibitory law. *Van Voorhis* v. *Brintnall*, 9, *and note.*

2. So much of a decree in divorce against a person not residing within the jurisdiction of the court as provides that such person shall not marry again is invalid. *Garner* v. *Garner*, 346.

3. The courts of a state in which a marriage valid by its laws is contracted between subjects of foreign states will give effect to a subsequent decree of the court of the foreign state of which the husband was a subject, annulling the marriage on the ground that it had been contracted without the consent of the sovereign of such foreign state, it appearing that at the time of the decree of nullity both parties had returned to such foreign state and were within the jurisdiction of the court pronouncing the decree. *Roth* v. *Ehman*, 589, *and note.*

4. A decree of divorce may be re-opened during the term at which it was entered, but will not be re-opened at the request of a respondent who has been guilty of delay or false pleading. *Mumford* v. *Mumford*, 203.

5. Divorced wife can maintain action against former husband for services performed before their marriage. *Carlton* v. *Carlton*, 74.

6. A decree vesting in the wife specific personal property of the husband as alimony is valid, at least when made in pursuance of an agreement of the parties. *Crews* v. *Mooney*, 346.

7. Such decree cannot be avoided in a collateral action. *Id.*

8. Courts of chancery may decree *ad interim* alimony, and enforce it by all the means by which courts usually compel obedience, and if there be cross complaints they may dismiss his for disobedience to such decree, and allow the other to be prosecuted. *Casteel* v. *Casteel*, 752.

9. An appeal from an order for *ad interim* alimony may be taken immediately. *Id.*

10. Alimony should not be declared a lien on the husband's lands. *Id.*

II. *Curtesy and Dower.*

11. The burden of proof is upon the heirs who allege an ante-nuptial agreement debarring the husband from a share of his wife's estate to show such agreement and that it was in force at the wife's death. *Graves* v. *Wakefield*, 682.

12. The presumption as to the continued existence of such agreement from the fact that it once existed is overcome by the fact that it is not found among her papers. *Id.*

13. A married woman may surrender an ante-nuptial agreement to her husband to be cancelled. *Id.*

III. *Separate Estate.* See *infra*, 21–23.

14. A sum of money was paid to a husband and wife, and in consideration thereof they covenanted to support and maintain one X. during her life. *Held*, that the wife's interest in the sum so paid is her separate estate, and that she was liable upon the covenant as well as her husband. *Houghton* v. *Milburn*, 619.

15. Where, by the terms of a jointure, the husband was to account to the wife for the income of her separate estate, but failed to do so, his representative, after his decease, is liable to account therefor with interest calculated with yearly rests. *Middaugh* v. *Trimmer*, 74.

16. Widow may reclaim from her husband's estate her separate money loaned to him and applied to the payment of a mortgage on lands owned by them as husband and wife. *Greiner* v. *Greiner*, 812.

HUSBAND AND WIFE.

IV. *Contracts, Conveyances, &c.* See *ante*, 13, 14, 16.

17. Wife may mortgage her land to secure the debt of her husband or of any other person. *Merchant* v. *Thompson*, 74.

18. A warrant of attorney by the wife to confess judgment is valid if the contract to enforce which it is given is one which she is legally capable of making. *Heywood* v. *Shreve*, 683.

19. If a husband uses the money of his wife, and thereby acquires title to property, *bona fide* purchasers from him will be protected. *Gorman* v. *Wood*, 346.

20. Parol evidence is admissible to identify the debt of a husband for which a mortgage was given by the wife. *Hall* v. *Tay*, 346.

21. A married woman is not personally liable on her contract though possessing a separate estate, and a suit is not maintainable thereon against her personal representatives. *Davis* v. *Smith*, 159.

22. Her separate estate ceases to be such upon her death, and her general creditors are entitled to share in its distribution. *Id.*

23. A suit to charge such estate may be revived against her heirs. *Id.*

24. Liability of married woman on contracts. *Id., note.*

25. An insane husband of full age is under the control of his wife, and it is not trespass for her to enter his father's house and remove him. *Robinson* v. *Frost*, 682.

26. Action for slander of wife must be brought by husband and wife jointly, and the claim for damages must be joint. *Newcomer* v. *Kean*, 484.

27. Where a sale from husband to wife is attacked the burden is on the wife, or on a purchaser from her with notice to show *bona fides* and consideration, and a mere recital of a valuable consideration in the bill of sale will not support a verdict in her favor. *Horton* v. *Dewey*, 203.

ICE. See WATERS AND WATERCOURSES, 1, 2, 4.

INCUMBRANCE. See MORTGAGE.

INDICTMENT. See CRIMINAL LAW, 19, 22. LIBEL, 2.

INFANT. See EQUITY, 12, 13. GUARDIAN AND WARD. MUNICIPAL BONDS, 4. PARENT AND CHILD.

1. May, during minority, rescind sale of his goods upon tender of the consideration received, and may bring trover therefor, and such tender and the demand for the goods may be made by an agent appointed by the infant. *Towle* v. *Dresser*, 485.

2. No action lies to recover a minor's wages earned in violation of a statute prohibiting the employment of minors in certain cases. *Birkett* v. *Chatterton*, 136.

INJUNCTION. See ACTION, 2. CONSTITUTIONAL LAW, 3, 4, 23. EQUITY. 6, 8. TRADEMARK, 4, 6.

1. Will not be granted to restrain the use of land by an unlawful occupant simply because such use, although not forbidden by law, is alleged by complainant to be immoral and mischievous and calculated to injure his reputation in the community. *Bodwell* v. *Crawford*, 139.

2. A mortgagor who mortgages an embarrassed title or whose title becomes clouded, is not entitled to an injunction agaidst foreclosure proceedings because the property will not bring full value. *Am. Dock and Imp. Co.* v. *Trustees of Public Schools*, 620.

3. A court of equity will not enjoin a sale of lands under an execution against one person merely because the title to the land is claimed by another, unless the case is one of fraud or irreparable injury. *Id.*

4. Allegation that judgment-creditor of complainant's grantor has seized and is about to sell complainant's lands is no ground for an injunction. *Sheldon* v. *Stokes*, 74.

INSANITY. See LUNATIC.

INSOLVENCY. See CORPORATION, 26, 27.

Where a note is allowed against the estate of an insolvent surety, and afterwards a dividend is paid on it by the estate of the insolvent principal, the

INSOLVENCY.

owner of the note is entitled to a dividend from the estate of the surety only on the balance, and not on the amount first allowed. *Lowell* v. *French*, 683.

INSURANCE.

I. *Marine.* See ADMIRALTY, 6.

II. *Life.*

1. Equity will not relieve against forfeiture for non-payment of premium, even though such non-payment be caused by the derangement of the mind of the insured through illness, and the ignorance of the beneficiary of the existence of the policy. *Klein* v. *New York Life Ins. Co.*, 74.

2. The courts will not relieve against a forfeiture for non-payment of premiums which is stipulated for in the policy or in the premium note. *Thompson* v. *Knickerbocker Life Ins. Co.*, 271.

3. Neither a usage of the company to give notice, nor a usage to give days of grace, will avail as a defence in case of non-payment for want of such notice. *Id.*

4. Even if there is ground for relief against the forfeiture, such relief will not be granted unless there had been a subsequent tender of the premiums due. *Id.*

5. The policy cannot be contradicted by proof of a cotemporaneous parol agreement. *Id.*

6. Where one travels beyond the limits assigned by the policy and dies, a permit subsequently given by a local agent in ignorance of the death, is not a waiver of the forfeiture. *Bennecke* v. *Conn. Mut. Ins. Co.*, 420.

7. If the ordinary habits of the insured were temperate, the fact that he had been attacked by delirium tremens from an exceptional over indulgence, will not render untrue an answer in his application to the effect that he was, and had always been, of temperate habits. *Knickerbocker Life Ins. Co.* v. *Foley*, 620.

8. A stipulation that if a policy should become void for any cause it should not be revived by the issue of a renewal receipt, may be waived by an agent, and the insurer, after receiving the premium and issuing the renewal receipt, is estopped to deny the contract. *Shafer* v. *Phœnix Ins. Co.*, 140.

9. If a policy insures the life of A. for the use of B., A. cannot maintain an action against the insurer for the premiums paid, although the policy never took effect by reason of fraud by the insurer's agents. *Trabandt* v. *Conn. Mut. Life Ins. Co.*, 347.

10. Where a policy in the name of a wife on the life of her husband is payable to the wife if she survive her husband, and if she does not, then to her children, the children are in the latter event the sole beneficiaries, and an adopted child may take where the circumstances show such an intent. *Martin* v. *Ætna Life Ins. Co.*, 485.

11. An assignment of a policy for moneys advanced by the assignee, is valid only to the extent of such advances, and the assignee must account to the representatives of the assignor for the balance. *Warnock* v. *Davis*, 346.

12. Where a certificate of membership in a mutual company provided for an assessment on the members, and payment of the sum collected within a certain time after notice of death, a declaration containing no allegation of a neglect to make the assessment and assigning no breach except of a promise to pay is fatally defective, and such defect is not cured by a verdict. *Curtis* v. *Mut. Ben. Life Ins. Co.*, 203.

13. A corporation for the mutual protection and relief of its members, and for the payment of stipulated sums to the families of deceased members, belongs to the class of corporations formed for purposes other than for profit. *Ohio* v. *Standard Life Association*, 620.

14. A certificate of membership in such a corporation by which the corporation in consideration of the payment by a member of a membership fee, annual dues and a pro rata assessment with his fellow members to pay a sum of money to the family of a deceased member, stipulates to pay at his death to his family a sum of money, graduated by the number of members in his class, is a contract of life insurance. *Id.*

15. Such a contract to pay in case of a member's death "to himself or

INSURANCE.
assignees," "to his estate," "to his executors or administrators," or to any person, whether a relation or not, who is not of his family or heirs, is against public policy, and void. *Ohio* v. *Standard Life Association*, 620.

III. *Fire.*

16. A verbal agreement to insure is binding. *Baile* v. *St. Joseph F. & M. Ins. Co.*, 37, *and note.*

17. The only element of a valid contract wanting in such an agreement was the nature of the risk. *Held*, That this might be inferred from the business of the insurance company and the subject-matter of the insurance. *Id.*

18. Specific performance of such an agreement may be enforced after loss, by decreeing payment of the money. *Id.*

19. The violation of conditions which would have been contained in the policy if issued, is no defence to such agreement. *Id.*

20. Verbal assent of agent to additional insurance sufficient, though the policy stipulates for endorsement of written consent. *Id.*

21. Company refusing to pay on other grounds cannot defend on ground of delay in furnishing proofs. *Id.*

22. Insured may sue in his own name although the loss was payable to a third person, if such third person consents to the suit. *Coates* v. *Penna. Fire Ins. Co.*, 747.

23. Where after the making of a contract of sale of a house, but before completion of the purchase, the house is damaged by fire and the vendor receives the insurance money, the vendee is neither entitled to the insurance money nor to reinstatement of the premises. *Rayner* v. *Preston*, 89, *and note.*

24. Furniture in a fire policy was described as "ll contained in house No. —, McMillen street." The insured, without the insurer's knowledge, removed the furniture to a house in another street, where they were consumed. *Held*, that the insured could recover on the policy. *Lyons* v. *Providence Washington Fire Co.*, 139.

25. A condition in a policy that any one insuring in the company must give notice of other insurance, is not restricted to other insurance effected prior to the execution of the policy. *Warwick* v. *Monmouth Co. Fire Ins. Co.*, 683.

26. Where there are two policies, each containing a condition rendering the policy void in case of other insurance, the second policy does not invalidate the first. *Jersey City Ins. Co.* v. *Nichol*, 620.

27. The second policy being void, there is no fraud in the statement in a proof of loss under the first, that there is no other insurance. *Id.*

INTEREST. See BILLS AND NOTES, 5. CONSTITUTIONAL LAW, 2. CONTRACT, 5. CORPORATION, 10. EXECUTOR, 1, 5, 6, 11. FORMER ADJUDICATION, 1, 3. HUSBAND AND WIFE, 15. NATIONAL BANK, 2. TRUST, 1. USURY.

INTERPLEADER. See WILL, 7.

INTOXICATING LIQUORS. See CONSTITUTIONAL LAW, 8, 16.

A statute providing that "evidence of the sale or keeping of intoxicating liquors for sale in any building, place or tenement, shall be *prima facie* evidence that the sale or keeping is illegal," is not unconstitutional. *State* v. *Higgins*, 140.

INTOXICATION. See CRIMINAL LAW, 31.

JOINTURE. See HUSBAND AND WIFE, 15.

JUDGMENT. See CONFLICT OF LAWS, 2. EQUITY, 1. FORMER ADJUDICATION, 2. HUSBAND AND WIFE, 18. MUNICIPAL CORPORATION, 2. POSSESSION, 2. PRACTICE, 2. SET-OFF, 1.

1. Is beyond the control of the court after the term at which it was rendered except as to certain mistakes of fact formerly remedied by writ of error *coram vobis* but now remedied by motion. *Bronson* v. *Schulten*, 347.

2. Neither the state statutes nor the practice of the state courts can control the United States courts in this respect. *Id.*

JUDGMENT.

3. Negligence and laches of the party in discovering the mistake will bar his right to relief. *Bronson* v. *Schutten*, 347.

4. Judgment for costs cannot, at a subsequent term, be modified so as to be enforced against the equitable instead of the legal plaintiff. *Boland* v. *Benson*, 621.

5. A judgment of revival does not validate or otherwise alter the nature or effect of the original judgment. *Weiller* v. *Blanks*, 547.

6. The fact that a plaintiff has appealed from a judgment in his favor, does not prevent him from suing for its revival; and such proceeding will not prejudice his rights on appeal. *Id.*

7. Judgments for money are prescribed by ten years from the date of their rendition: and the prescription runs from the date of the signing of the judgment by the inferior court, and not from that of its confirmation by the appellate tribunal. *Id.*

8. The pendency of an appeal by either party, even suspensive, does not stay the course of prescription against a judgment. *Id.*

9. The owner of a city lot is not bound by a judgment in a mandamus proceeding to compel councils to levy an assessment thereon, to which proceeding he was not a party. *Rork* v. *Smith*, 621.

JUDICIAL SALE. See MORTGAGE, 5. SHERIFF'S SALE. WILL, 22.

1. The doctrine of *caveat emptor* applies to an administrator's or executor's sale. *Jones* v. *Warnock*. 272.

2. A covenant of warranty enures to the benefit of a purchaser at a judicial sale. *Williams* v. *Berg*, 753.

JURISDICTION. See COURTS. EQUITY, 2, 5, 12. HUSBAND AND WIFE, 2.

JUROR AND JURY. See CRIMINAL LAW, 9, 10. VERDICT, 1, 2.

1. Misconduct of jury may be shown in a civil case by affidavits of jurors, and if they refuse to give affidavits, they may be called and examined by the trial judge. *Whitmore* v. *Ball*, 742, *and note.*

2. For a refusal ot the trial judge so to do, the appellate court will order a new trial. *Id.*

3. Where one respondent peremptorily challenges a juror, and the other desires him to sit, it is proper for the court to excuse him. *State* v. *Meaker*, 683.

4. An opinion to disqualify a juror must be more than a transitory inclination of the mind. It must be an abiding bias as to the guilt or innocence of the accused upon the evidence substantially as expected to be presented on the trial. *Id.*

JUSTICE OF THE PEACE. See CONTEMPT, 2.

LACHES. See GUARDIAN AND WARD, 2. JUDGMENT, 3.

ANDLORD AND TENANT. See WATERS AND WATERCOURSES, 9.

1. A Catholic priest, removable at the will of the bishop, is not a tenant of the parsonage, and is not entitled to the statutory notice to quit. *Chatard* v. *O'Donovan*, 461, *and note.*

2. A lessee is not released by the fact that a prior tenant whose term has expired holds over without right. *Field* v. *Herrick*, 203.

3. Where a lessee for years, who has covenanted to pay taxes, leases to another for the whole of his unexpired term by a lease which covenants to pay an increased rent, and the taxes with stipulations for entry for breach of covenant, this is a sub-lease and not an assignment, and the sub-lessee is not liable to the original lessor upon the covenant to pay taxes in the original lease. *Dunlap* v. *Bullard*, 347.

4. A reletting of the premises to the tenant after recovering a judgment of possession against him, is a satisfaction of the judgment. *Barney* v. *Cain*, 347.

5. The lien of a landlord will not be defeated by the conversion of the property of a tenant into money by a receiver under an order of court, but will attach to the proceeds in the receiver's hands. *Gilbert* v. *Greenbaum*, 547.

6. Where a landlord takes possession of and gins and bales a crop which has been mortgaged and then abandoned by the tenant, he may, as against the

LANDLORD AND TENANT.
mortgagee, retain out of the proceeds the expense of preparing the crop for market as well as the rent. *Fry* v. *Ford*, 753.

LARCENY. See CRIMINAL LAW, 5.

LEASE. See GUARDIAN AND WARD, 3. LANDLORD AND TENANT. SALE, 1, 3. SPECIFIC PERFORMANCE, 5, 6.

LEGACY. See EXECUTOR, 5. TAX, 5. WILL, 1, 4, 7, 10, 11.
Is not to be considered a charge upon real estate unless the intention to charge it is expressly declared or fairly inferable from the will. *Owens* v. *Claytor*, 348.

LIBEL. See ATTORNEY, 7.
1. A publication is libellous if, without charging an indictable offence, it falsely and maliciously imputes conduct tending to injure reputation, to cause social degradation, or to excite public distrust, contempt or hatred. *State* v. *Spear*, 140.
2. An indictment for libel is good if it charges the publication of matter not libellous *per se*, but charges such publication with proper inducements and innuendoes to set forth and explain the defamatory statements of the publication. *Id.*
3. Whether words declared upon are libellous, is a question for the jury and not for the court. *Beazeley* v. *Reid*, 485.
4. An attorney is liable for a defamatory statement contained in a declaration in an action where such statement was not pertinent or material. *McLaughlin* v. *Cowley*, 272

LICENSE. See CONSTITUTIONAL LAW, 6. MUNICIPAL CORPORATION, 14. PLEADING, 1. TRESPASS, 2.

LIEN. See BAILMENT, 3. BANK, 2. HUSBAND AND WIFE, 10. MECHANIC'S LIEN. STOPPAGE IN TRANSITU. VENDOR AND VENDEE, 1–5, 8.

LIFE TENANT.
1. Is entitled to dividends on stocks, even if they are extraordinarily large, if they are intended by the corporation as a distribution of income. *Millen* v. *Guerrard*, 381.
2. Respective rights of life-tenant and remainderman in stock. *Id.*, *note.*

LIMITATIONS, STATUTE OF. See CONSTITUTIONAL LAW, 1. UNITED STATES COURTS, 3. VENDOR AND VENDEE, 4.
1. A promise to pay "as soon as possible" a debt already barred by the statute, will remove the bar. *Norton* v. *Shepard*, 204.
2. The mere addition of a seal to a promissory note will not prevent it from being barred by the statute unless the fact of its being a sealed instrument is recited in the body of the note. *Chambers* v. *Kingsbury*, 343; *Skrine* v. *Lewis*, 480.
3. A note and mortgage barred by the statute may be revived by an admission of indebtedness by the mortgagors, and the priority of the lien will be preserved as against liens taken before the mortgage became barred, and not foreclosed until it is revived. *Kerdt* v. *Porterfield*, 548.
4. Payment by a principal debtor which will take a case out of the statute as to him, will have the same effect as to his surety who is present. *Glick* v. *Crist*, 140.
5. A clear and unequivocal admission of a debt will take it out of the operation of the statute, without an express promise, but the admission must be so distinct as to remove hesitation as to the debtor's meaning. *Palmer* v. *Gillespie*, 621.
6. In action against one of two joint makers of a note evidence is admissible of part payment by co-maker, since deceased, and of admissions of the maker sued. *Burgoon* v. *Bixler*, 75.
7. Where collateral is given for several notes the proceeds of such collateral should, in the absence of any special direction, be applied as a partial payment on each note, and thus prevent the running of the statute as to all. *Taylor* v. *Foster*, 813.

LIMITATIONS, STATUTE OF.

8. Begins to run in favor of a fraudulent conveyance from the time the creditor had a right of action to test its validity. *Ramsey* v. *Quillen*, 753.

9. Adverse possession by fraudulent grantees will avail, although such grantees were members of the grantor's family. *Id.*

10. Occupation by husband and wife, where the legal title is in the wife, enures to her benefit. *Id.*

11. Commences to run against coupon attached to municipal bond from maturity of the coupon. *Town of Koshkonong* v. *Burton*, 548.

LIS PENDENS.

1. The doctrine of lis pendens cannot be extended to support a bill against third persons for the value of wood cut during proceedings involving the title to the land. *Gardner* v. *Peckham*, 264.

2. A purchaser of land is charged with notice of an action affecting the same from the time the petition is filed, although the action was not properly indexed, and the notice was not served until after the purchase. *Haverly* v. *Alcott*, 813.

LOAN. See CORPORATION, 10.

LOCAL ACTION. See ACTION, 3, 5.

LUNATIC. See HUSBAND AND WIFE, 5.

1. Not liable upon his accommodation endorsement of a promissory note even to a *bona fide* purchaser of the note without notice. *Wirebach* v. *First National Bank of Easton*, 29.

2. Extent of liability upon contracts. *Id.*, *note.*

3. Will be bound by reasonable contract made in the ordinary course of business with parties ignorant of the lunacy, and who cannot be placed in *statu quo*. *Abbott* v. *Creal*, 548.

4. Where a grantor in a deed labors under an insane delusion as to a particular person, and the deed is an act referable to that state of mind, the deed is void, and in such case the rule that the grantor must be proved to be insane or under undue influence at the very time the deed was executed, is inapplicable. *Jones* v. *Jones*, 666, *and note.*

5. It is sufficient to invalidate a deed executed for an inadequate consideration by a person of weak intellect, to show that the grantee held a situation of confidence with respect to him, and in such case the burden of proof to show consideration is on the grantee. *Id.*

MALICIOUS PROSECUTION.

1. In an action for false imprisonment proof of the circumstances of plaintiff's family, and of the filthy condition of the jail used for the imprisonment, is admissible upon the question of mental anguish, &c. *Fenelon* v. *Butts*, 141.

2. In such action statements of the attorney of defendant in reference to a second imprisonment of plaintiff then threatened, are admissible if such attorney was then acting for defendant or was a co-conspirator with him, or made the statements in his presence and with his assent. *Id.*

3. Proof of defendant's good faith is not admissible to mitigate compensatory damages, including those allowed for injury to the feelings. *Id.*

4. If a mortgage creditor contract with his debtor not to enforce his mortgage within a given time but subsequently does so, the latter has a right to sue for the actual injury without alleging malice or want of probable cause. *Juchter* v. *Boehm*, 272.

5. In case of malice or want of probable cause punitive damages may be added. *Id.*

6. In an action for the wrongful seizure of a tradesman's stock, profits which he was making may be considered by the jury in estimating the magnitude of the injury. *Id.*

7. If the defendant has acted in bad faith, or been stubbornly litigious, counsel fees may be proved and allowed as part of the damages. *Id.*

8. In an action for maliciously attaching plaintiff's goods if there was no probable cause the jury may presume malice. *Bozeman* v. *Shaw*, 348.

9. The advice of counsel is no protection if the prosecutor believed the

MALICIOUS PROSECUTION.
prosecution would fail, and was actuated by a desire to injure the accused. *Sharpe* v. *Johnstone*, 576, *and note.*
10. Malice is not an inference of law from the want of probable cause, but may be inferred from the facts which go to establish want of probable cause. Such inference is for the court and not the jury. *Id.*
11. Separate damages may be recovered for an indictment after discharge by the committing magistrate, if procured by the prosecutor, but not if he was summoned as a witness without his procurement. *Id.*
12. Where there are two successive indictments for the same offence, but a trial on one only, they cannot be regarded as two separate prosecutions. *Id.*
13. Evidence of facts tending to show the guilt of plaintiff, although inadmissible to show probable cause, should be admitted as bearing on the question of actual guilt. *Newton* v. *Weaver*, 513.
14. In an action for malicious prosecution in bringing an action of trover the verdict in the trover case is not conclusive upon the question of actual guilt. *Id.*
15. Advice of counsel upon a full disclosure of facts is a good defence. *Id.*
16. If the plaintiff was in fact guilty of the crime charged no recovery can be had. *Purkhurst* v. *Mastellar*, 813.
17. Mental suffering and injury to feelings constitute elements of actual or compensatory damages. *Id.*
18. Exemplary damages may be allowed by way of punishment. *Id.*
19. THE ACTION FOR THE MALICIOUS PROSECUTION OF A CIVIL SUIT, 281, 353.

MANDAMUS. See JUDGMENT, 9. MUNICIPAL BONDS, 3
1. Will lie to compel a county treasurer to transfer to the state treasury the state's proportion of taxes collected by him. *Ohio* v. *Staley*, 621.
2. A petition showing the collection of such taxes is not defective for want of an averment that they remain in the county treasury. *Id.*
3. Any court having jurisdiction may by mandamus compel a municipal corporation to levy a tax to pay its debts, but only in the manner and to the extent of the power conferred on it by law. *State* v. *Rainey*, 480.

MARITIME LIEN. See ADMIRALTY, IV.

MARKET OVERT. See SET-OFF, 2.

MARRIAGE. See DEED, 8. HUSBAND AND WIFE, I.

MASTER AND SERVANT. See DAMAGES, 5. PARENT AND CHILD, 1–3.
1. Where an employee, under a monthly employment, says to his employer that he desires to have his employment made more permanent, and thereupon a specified amount per year is agreed upon, a hiring for a year may be inferred. *Bascom* v. *Strillito*, 272.
2. A contract by an employee to give two weeks' notice or forfeit two weeks pay does not apply to a temporary absence, and while the employee may be discharged for such offence his pay cannot be forfeited. *Heber* v. *Flax Manuf. Co.*, 204.
3. Where a servant engages for a particular time and improperly leaves before that time, he cannot recover compensation for his services. *Hibbard* v. *Kirby*, 754.
4. An employer who continues an employee in his service after learning of negligence or misconduct on the part of the latter, is estopped from subsequently complaining of such negligence or misconduct. *Marshall* v. *Sims*, 141.
5. Where a servant operating machinery is, by reason of his youth and inexperience, not aware of the danger, it is the duty of the master to warn him, notwithstanding the existence of that which renders the machinery dangerous is known to the servant. *Dowling* v. *Allen*, 348.
6. A foreman in charge of a distinct piece of work in a large foundry is as to those under him a vice principal to their employer, notwithstanding that he is subordinate to a general foreman of the entire establishment. *Id.*
7. The rule that one riding in a conveyance has no action for an injury caused by the driver's negligence, does not apply to passengers in a public con-

MASTER AND SERVANT.

veyance, even though they have chartered the conveyance. *Cuddy* v. *Horn*, 302, *and note*.

8. A section foreman of a railroad is not a fellow servant with the switchman. *Hall* v. *Mo. Pac. Railroad Co.*, 485.

9. A section hand injured by the negligence of the section boss in running a "crank car" backwards, may maintain an action against the company. *Railroad Co.* v. *Nelson*, 76.

10. A railroad receiving from another railroad for transportation a car in apparently good condition, is not bound, for the protection of its employees, to apply the tests proper to be used in the original construction of the car. *Ballou* v. *C. & N. Railroad Co.*, 421.

11. A railway company is responsible for the act of its clerk in endeavoring to corruptly influence a witness in a case against the city. *Chicago City Railway Co.* v. *McMahon*, 684.

12. An employer is not liable for injuries resulting from the negligence of a contractor, although the employer may have known that the contractor was of bad character. *Dobson* v. *Iron Co.*, 76.

13. Whether a person in the performance of work for another is a servant or contractor, depends upon whether he represents the will of the principal in the management and details of the work. *Id.*

MECHANIC'S LIEN.

1. One employed for an indefinite time to direct the work in a mine, with authority to employ and discharge miners and purchase supplies, and who, in the performance of those duties did some manual labor, is entitled to a lien under a statute giving a lien to any person who should perform any work or labor upon any mine. *Flagstaff Silver Mining Co.* v. *Collins*, 141.

2. One who performs labor for a contractor in the erection of a building is entitled to a lien, although no express contract for payment was made. *Foerder* v. *Wesner*, 421.

3. The fact that a laborer also acted as overseer of other workmen will not defeat his right to a lien. *Id.*

4. A mechanic may be estopped by acts from asserting a lien, although he made no express promise not to assert such lien. *West* v. *Klotz*, 141.

5. Prices agreed upon between the contractor and a material man are not binding upon the owner, but are prima facie evidence of the market value. *Deardorff* v. *Everhartt*, 348.

6. Declarations of the contractor are not evidence against the owner. *Id.*

7. A lien cannot be enforced for materials furnished to the contractor but not put into the building. *Id.*

8. MECHANICS' LIEN ON PERSONAL PROPERTY, 151, 209.

MESNE PROFITS. See EJECTMENT.

MINES AND MINING. See MECHANIC'S LIEN, 1. SPECIFIC PERFORMANCE, 6. UNITED STATES, 2, 3.

1. Where the original locators of a mining claim who have neglected to perform the annual work required by the Act of Congress of May 10th 1872, resume such work before a re-location by other parties, such resumption will continue their claim until the end of the year in which the work was resumed. The Act of June 6th 1874, makes no change in this respect. *Belk* v. *Meagher*, 204.

2. A re-location by other parties during the year in which work is resumed gives the new parties no right to the possession, even though they remain in possession after the expiration of such year. *Id.*

3. In such case the original owners by a peaceable entry on their claim may secure a good right which will enable them to hold the claim as against such other parties. *Id.*

MINOR. See INFANT. GUARDIAN AND WARD. PARENT AND CHILD.

MISREPRESENTATION. See FRAUD, 1–3.

MORTGAGE. See ATTACHMENT, 8. DEBTOR AND CREDITOR, 10, 11. EQUITY, 18. EVIDENCE, 11. FIXTURES, 1. HUSBAND AND WIFE, 17, 20. INJUNCTION, 2. LANDLORD AND TENANT, 6. LIMITATIONS, STATUTE OF, 3.

MORTGAGE.

PARTNERSHIP, 16. PAYMENT, 1. PLEDGE, 6. SALE, 1, 2. SUBROGATION, 2, 3. SURETY, 11. TROVER, 6.

I. *Generally.*

1. Where there is a public office for recording mortgages a failure to record will postpone the lien as to a subsequent bona fide mortgagee, even though such recording is not required by statute. *Neslin* v. *Wells*, 273.

2. An agreement by a purchaser to pay an existing mortgage debt as part of the consideration may be enforced by the mortgagee, but not if the conveyance in which such agreement is inserted is itself a mortgage. *Bassett* v. *Bradley*, 273.

3. The items of indebtedness need not be stated in a mortgage if the total amount is named, and in the absence of fraud the debt may be identified by parol. *Wood* v. *Weimer*, 204.

4. The rule that the holder of commercial paper, seeking to enforce in equity a mortgage security therefor, is subject to any defence which would be good against the mortgage in the hands of the mortgagee, has no application to deeds of trust given to secure railroad coupon bonds. *Peoria and Springfield Railroad Co.* v. *Thompson*, 684.

5. Where a railroad, its appurtenances and franchises, are mortgaged as a whole, there is no power or authority to sell them separately, and such property, not being, strictly speaking, either real or personal estate, is sold on foreclosure proceedings without any right of redemption. *Id.*

6. The giving of further time for the payment of an existing debt, is a valuable consideration sufficient to support the mortgage as a purchase for value. *Cass County* v. *Oldham*, 684.

7. If taken as security until solvency of proposed surety is ascertained, it will be presumed to be discharged upon the acceptance of the surety. *Baile* v. *St. Joseph F. and M. Ins. Co.*, 37.

8. In a foreclosure suit the amount due, the day for payment and an order of sale upon default may be embraced in one decree. *Chicago, D. and V. Railroad Co.* v. *Fosdick*, 421.

9. An error in such decree, in the finding of the amount due, will vitiate all subsequent proceedings. *Id.*

10. Where a railroad mortgage gave to trustees power to foreclose upon request of a majority of bondholders, they have no power to proceed without such request. *Id.*

11. A mortgagee who has paid a prior incumbrance, is entitled to repayment thereof when the mortgagor comes to redeem. *McCormick* v. *Knox*, 486.

12. Where an assignee of notes secured by mortgage fails to take and record an assignment of the mortgage, and the mortgagee subsequently acquires the equity of redemption, enters a release of the mortgage and gives a new mortgage, the latter mortgagee acquires a prior lien. *Ogle* v. *Turpin*, 486.

13. Where the trustee in a deed of trust releases without the consent of the party secured, a subsequent incumbrancer without notice cannot acquire a prior lien, but if the party secured has authorized the trustee's act, or failed to promptly repudiate it, he is estopped from denying its validity. *Barbour* v. *Scottish Am. Mortgage Co.*, 485.

14. In equity parol evidence is admissible to reform a mortgage. *Tabor* v. *Cilley*, 75.

15. But equity will not reform a mortgage given by one insolvent if the rights of third persons would be injuriously affected thereby. *Id.*

16. A mortgage lien purchased by the owner of the equity of redemption will be kept alive in equity for the protection of the purchaser whether the purchaser takes an assignment of the lien or a release of the mortgagee's interest. *Duffy* v. *McGuiness*, 814.

17. After the expiration of the statutory time to redeem property sold under foreclosure proceedings, the mortgagor cannot maintain a bill to redeem on the ground that the right of redemption was not secured to him by the decree. *Burley* v. *Flint*, 622.

II. *Of Chattels.*

18. Where a mortgage is made of chattels which both parties know belong

MORTGAGE.
to a third person, the mortgagor cannot afterwards, as against the mortgagee, deny his ownership. *Harvey* v. *Harvey*, 814.
19. A paper as follows: "Received of J. J. Findley and W. F. Findley, $25 in full payment for one black cow, about six years old, and one calf, now belonging to said cow, about two months old, said cow being the cow I bought of Bob Reed. It is agreed by the purchasers of the above property and Austin Hughes, the signer of this receipt, that said Hughes shall retain the property and use the same from this date to the first day of October next, at which time, should the said Hughes pay to said Findleys $25, then the property to remain said Hughes's, but if the money be not paid that day the property to be delivered up to the said Findleys." *Held*, to be a mortgage. *Findley* v. *Deal*, 814.
20. Purchase by mortgagee at his own sale under a chattel mortgage, will not be set aside when made with the consent of the mortgagor. *Goodell* v. *Dewey*, 75.
III. *Of Realty.*
21. A mortgage of lands not owned by the mortgagor, will become a lien thereon the moment the mortgagor acquires title to the land, and it cannot be rendered subordinate to the lien of subsequent judgments. *Rice* v. *Kelso*, 754.
22. Holders of judgment liens, not made parties in the foreclosure of a superior mortgage, have their right of redemption, but cannot acquire titles under execution sales that will defeat the mortgage title. *Id.*
23. If a mortgagee takes possession and permits the mortgagor to take the profits, he will be required to account, at the suit of other creditors, for the profits, but in the absence of fraud he will be required to account for only such as are actually received. *Ely* v. *Turpin*, 684.
24. In the ordinary case of a purchase of an equity of redemption from a mortgagor, with a provision in the deed that the grantee assumes and agrees to pay the mortgage debt, no right of action on the promise accrues to the mortgagee. *Meech* v. *Ensign*, 608.
25. Of an undivided moiety in land will not be transferred to a particular part allotted to the mortgagor in severalty by a subsequent partition to which the mortgagee was not a party. *Jackman* v. *Beck*, 349.

MUNICIPAL BOND. See CONFLICT OF LAWS, 2. EQUITY, 2. LIMITATIONS, STATUTE OF, 11,
1. Good in the hands of an innocent purchaser, although issued by a court *de facto* but not *de jure*. *Ralls Co.* v. *Douglass*, 814.
2. Where by statute authority is given to execute bonds under seal, the requirement of a seal is directory merely, and the omission of a seal does not invalidate the bonds. *Draper* v. *Town of Springport*, 273.
3. A statute authorized precincts of counties to vote for the issue of bonds in aid of internal improvement, and provided that upon such vote the county commissioners should issue special bonds for such precinct and levy a special tax upon the property within such precinct. *Held*, that suit upon such bonds should be brought against the county and not against the precinct. *Held further*, that it was no defence to an action upon such bonds in a federal court that the state statute had provided a remedy by mandamus. *Davenport* v. *County of Dodge*, 622.
4. Where municipal authorities have upon forged assignments cancelled certificates of stock belonging to a minor, and issued new certificates to the assignee, they may replace the certificates belonging to the minor and pay to his guardian the arrears of interest. *Council af Baltimore* v. *Ketchum*, 486.

MUNICIPAL CORPORATION. See CONSTITUTIONAL LAW, 7. EQUITY, 2. MANDAMUS, 3. NEGLIGENCE, 9. TAXATION, 8, 9.
1. Is liable in damages for injury to abutting lot caused by a failure, in raising the grade of the street, to restrain the earth within the limits of the street. *Broadwell* v. *City of Kansas*, 539.
2. In a suit for such damage a record of a judgment against the lot holder upon tax bills for the work is not admissible. *Id.*
3. Liable for injury to lot caused by negligent excavation of street although the lot does not immediately abut upon the street. *Keating* v. *Cincinnati*, 622.

MUNICIPAL CORPORATION.

4. Such liability extends to injury to improvements on the lot, if the owner is not chargeable with negligence in making them. *Keating* v. *Cincinnati*, 622.

5. May do an authorized act by resolution as well as by ordinance. *State* v. *City of Passaic*, 684.

6. The judgment of commissioners of assessment on matters of fact will not be reversed except for clear error. *Id.*

7. Not liable for mere slipperiness of highway from snow or ice. *Smith* v. *Bangor*, 74.

8. Notice to municipal officers must be notice of the identical defect and not merely of a cause likely to produce it. *Id.*

9. Notice cannot be proved by the admission of a municipal officer, though his declarations accompanying his official acts are admissible. *Id.*

10. Not liable for injury to scholar through a defect in the heating apparatus of a school which is voluntarily maintained by the corporation under a general statute. *Wixon* v. *City of Newport*, 548.

11. A city officer taking earth from private property for use in improving the streets is liable in trespass, but the city is not. *Rowland* v. *City of Gallatin*, 685.

12. Where a city builds a bridge upon a street, and thereby cuts off access to a house along an intersecting street, except by means of stairs, the city is liable to the owner of the house in damages. *Rigney* v. *Chicago*, 483.

13. A county is not liable upon a warrant drawn upon a fund which has become exhausted, and which the authorities have no power to replenish. *Moody* v. *Cass County*, 486.

14. A statutory authority to license certain trades, excludes the power to license trades not enumerated. *City of Cairo* v. *Bross*, 273.

15. The debts of a municipal corporation are not extinguished by the repeal of its charter, and upon its re-incorporation under a new name, pending suits may be revived against such new corporation. *O'Conner* v. *City of Memphis*, 181, *and note*.

16. A legislative provision exempting such new corporation from liability for such debts is unconstitutional. *Id.*

17. Whether the legislature may withhold the taxing power for such debts not decided. *Id.*

18. The courts will not take notice, *ex propria motu*, of municipal ordinances. *Laviosa* v. *Chicago, St. L. and N. O. Railroad Co.*, 549.

19. Where restrictions are placed by law on the erection of certain structures, there is an implied authority to erect them provided the restrictions be complied with. *Id.*

20. Without general legislation declaring all of its class a nuisance, a city cannot declare any particular thing to be one. *Id.*

21. A municipal ordinance authorizing an unreasonable or oppressive use of a street by a railroad is void. *Id.*

MURDER. See CRIMINAL LAW, VI.

NAME. See TRADEMARK, 5.

1. The term "junior," is no part of a man's name, and if a son who bears the same name as his father, buys land in his own name without the designation of "junior," there is no presumption that he intended the father should take title. *Simpson* v. *Dix*, 349.

2. In such case evidence is admissible to show who is the grantee. *Id.*

NATIONAL BANKS. See BANK. CORPORATION, 3, 4.

1. A national bank, in voluntary liquidation under sect. 5220 Rev. Stat., is not thereby dissolved as a corporation, but may sue and be sued, and it is no defence to a suit by a creditor that he has also filed a creditor's bill to enforce the individual liability of the stockholder. *Central Nat. Bank* v. *Conn. Mut. Life Ins. Co.*, 76.

2. The fact that by the law of the state in which a national bank is situated, the purchase of business paper from the payee at a greater rate of discount than the legal interest, is not usurious, will not relieve the bank from the

NATIONAL BANKS.
penalty imposed by sect. 5198 Rev. Stat. *Nat. Bank of Gloversville* v. *Johnson*, 205.
3. Sect. 5228 U. S. Rev. Stat. does not make property belonging to others found in the custody of a national bank at the time of its suspension, under contracts other than special deposit, liable for the debts of the bank. *Louisiana Ice Co.* v. *State Nat. Bank*, 135.

NAVIGABLE STREAM. See WATERS AND WATERCOURSES, 1, 3, 7.

NEGLIGENCE. See AGENT, 4. BANK, 1. BILLS AND NOTES, 9. COMMON CARRIER, 3, 4. JUDGMENT, 3. MASTER AND SERVANT, 4–10, 12, 13. MUNICIPAL CORPORATION, 1, 3, 7, 10. RAILROAD, 3–10. STREET, 1, 2. TELEGRAPH, 5–8.
1. Where an injury is caused by the successive negligent acts of two persons, and the first is compelled to pay damages, he cannot recover indemnity against the other. *Churchill* v. *Holt*, 273.
2. Owner of vessel liable for injury caused by negligence of master, to passengers who had chartered the vessel. *Cuddy* v. *Horn*, 302, *and note.*
3. Where a collision occurs through the fault of both vessels, a passenger injured may maintain a joint action against them. *Id.*
4. The mere fact of the explosion of a boiler raises a presumption of negligence against the owner whose servants are operating it, and the burden is on him to disprove such negligence. *Rose* v. *Stephens & Condit Trans. Co.*, 522.
5. General principles governing suits for damages caused by explosions. *Id.*, *note.*
6. In an action against a railroad company for an injury causing death, where it appears that the deceased was found on a siding under the cars at a place not a public crossing, the burden is on plaintiffs to prove negligence on the part of the railroad employees. *State* v. *Balt. & Ohio Railroad Co.*, 754.
7. The fact that the cars had no brakeman on them while being run on the siding, is not sufficient to charge the defendant with negligence. *Id.*
8. In an action against a railroad for killing live stock, negligence on the part of the company must be shown, it is not inferred from the mere fact of the killing. *P. C. & St. L. Railway Co.* v. *McMillan*, 422.
9. In an action against a city for injury by an obstruction of a stream, the failure of the plaintiff to use ordinary diligence and incur moderate expense, if by so doing he could have prevented the injury, is contributory negligence. *Hoehl* v. *City of Muscatine*, 754.
10. The doctrine of riparian proprietorship does not apply to a stream meandering through a city. *Id.*
11. Owners of a wharf are liable to a customs officer who visits it in the performance of his duties, for injuries received because of its unsafe condition. *Low* v. *Grand Trunk Railway Co.*, 76.
12. When it is the duty of such officer to watch for smugglers, the fact that he does not carry a light in passing over the wharf at night is not contributory negligence. *Id.*
13. The fact that a person noticed, on entering a building, that there was ice on a sidewalk in front of the door, is not conclusive evidence in an action against the owner for an injury sustained on his way out, that he was not in the exercise of due care in attempting to pass over the sidewalk. *Dewire* v. *Bailey*, 349.

NEGOTIABLE INSTRUMENT. See BILL OF LADING. BILLS AND NOTES.
1. In the case of a *bona fide* purchase of stolen coupons after maturity, there is no presumption that they had been negotiated before maturity, and the owner, upon proof of the theft, may recover from the purchaser. *Hinckley* v. *Merchants' Nat. Bank*, 349.
2. Certificate of stock with blank power of attorney is not a negotiable instrument. *Note to Cherry* v. *Frost*, 57.
3. Where one, for a present consideration, in good faith purchases bonds in the regular course of business from a railroad company, such bonds will be regarded as having been issued for money, labor or property "actually received

NEGOTIABLE INSTRUMENT.
and applied," within the meaning of a constitutional provision prohibiting the issue except for such considerations. *Peoria and Springfield Railroad Co.* v. *Thompson*, 685.

NEW TRIAL. See CRIMINAL LAW, 15, 16. JURY, 2. VERDICT, 1.
1. Where the evidence is undisputed the court may direct the jury to enter a general or special verdict or may itself find the fact and render judgment, and it is intimated herein that after setting aside a special verdict as contrary to the evidence, the court might either grant a new trial, direct the proper verdict or render judgment according to the evidence. *Gammon* v. *Abrams*, 141.
2. A party who, after a special verdict has been set aside, does not ask for a new trial, waives it. *Id.*
3. A "reaper and self-binder," was delivered to a conditional purchaser in July, and used in the harvest of that season, and found defective. In January or February following, the vendor's agent called on the purchaser in relation to payment for the machine, and the purchaser said he would give nothing for it; but he still kept it and did not offer to return it until the following April. *Held*, that there was no error in setting aside a finding by the jury that the machine was returned in a reasonable time, and rendering judgment for its value. *Id.*

NOTICE. See AGENT, 8. LIS PENDENS. POSSESSION, 1.
1. The record of a deed which is void for insufficiency of description, is not constructive notice. *Cass Co.* v. *Oldham*, 685.
2. Two executors sold realty; a third party bought; on the same day he conveyed the land to one of the executors; some two years thereafter the latter sold to a purchaser for value; the deeds all purported to be for a fair and valuable consideration. *Held*, that the facts appearing from the deeds, were not sufficient to put the purchaser on notice that the sale was by an executor to himself. *Cox* v. *Barber*, 350.

NUISANCE. See MUNICIPAL CORPORATION, 20. SHERIFF, 5. STREET, 1. WATERS AND WATERCOURSES, 7.
1. When an erection in the highway is not a nuisance *per se*, the question as to whether it is a nuisance is one of fact for the jury. *City of Allegheny* v. *Zimmerman*, 622.
2. The erection of a liberty pole in a street, being sanctioned by uniform custom, is not a nuisance *per se*. *Id.*

OFFICER. See ACKNOWLEDGMENT, 1. CONTRACT, 7. CORPORATION, 11, 15. EXECUTION, 8. MUNICIPAL CORPORATION, 8, 11. TRESPASS, 1.
An official bond for the discharge of the duties of an office according to law embraces duties added by subsequent statutes. *Dawson* v. *The State*, 421.

ORDINANCE. See ERRORS AND APPEALS, 12. MUNICIPAL CORPORATION, 22.

PARENT AND CHILD. See CONFLICT OF LAWS, 3. DEED, 2. DURESS, 3. EQUITY, 12. HUSBAND AND WIFE, 25. INSURANCE, 10. RAILROAD, 3, 4. WILL, 4, 5.
1. If a minor hire himself out to service, his father may claim the wages under the contract or the value of his son's time, less whatever time was allowed him by the employer. *Sherloch* v. *Kimmell*, 685.
2. If a father hire his minor son for an indefinite period, the employer may discharge the son at any time without notice. *Id.*
3. In an action by the father to recover the son's wages, statements made by the son are not admissible in evidence against the father. *Id.*
4. In deciding as to the custody of infants, the chancellor must act as humanity, respect for parental affection and regard for the infant's best interests may prompt. *Verser* v. *Ford*, 350.
5. As against strangers the father, if of good moral character and able to support the child, is entitled to its custody; and, as between father and mother or other near relation, the father is generally to be preferred. *Id.*
6. The words "child or children" in the by-laws of a benevolent association providing for the payment of benefits do not include grandchildren. *Winsor* v. *Odd Fellows Beneficial Association*, 205.

PARTIES. See ARREST, 1.

PARTITION. See MORTGAGE, 25.

PARTNERSHIP. See ATTORNEY, 8. DEBTOR AND CREDITOR, 12. FRAUDS, STATUTE OF, 3. TRADEMARK, 5.

1. The funds of an insolvent firm paid by one partner upon his private debt without the consent of his copartner, may be attached at the suit of a firm creditor, even though the copartner was surety for the payment of such debt, and the money was collected upon a draft in the firm name. *Johnson* v. *Hersey*, 486.

2. The interest of a copartner in the partnership property may, in Rhode Island, be attached and sold at the suit of his individual creditor, and the purchaser at such sale is entitled to delivery of the property and becomes tenant in common with the other partners, subject to the partnership equities. *Randall* v. *Johnson*, 142.

3. A general assignment of all the assignor's estate, except what is exempt from attachment, conveys his interest as partner in the property of his copartnership. *Stiness* v. *Pierce*, 549.

4. The seizure and removal of firm property on an execution against one partner for his private debt constitutes a trespass for which the officer is liable in an action. *Sanborn* v. *Royce*, 799, *and note.*

5. A partner is liable individually as a stockholder to creditors of a corporation in which the partnership own stock. *Bray's Adm'r* v. *Seligman's Adm'r*, 686.

6. A member of a voluntary association is not liable for a debt incurred by a committee, if it does not appear that he was present at the appointment of the committee, and there is no evidence of the latter's authority. *Volger* v. *Ray*, 543.

7. When it is proved that the name of one sued as a partner, appeared as such in an advertisement in a paper to which he subscribed, and also on the letter heads of the firm, evidence of the general understanding and report of the community where the partnership business was carried on, is also admissible *Rizer* v. *James*, 142.

8. Where one is held out as a member of a firm with his own assent, he is responsible to every creditor or customer of the firm for all its liabilities. *Id.*

9. A retiring partner who fails to give notice of his retirement, continues to be liable to persons dealing with the firm, and it is immaterial whether such failure was negligent or unavoidable. *Uhl* v. *Harvey*, 118, *and note.*

10. It is the duty of such partner to give notice to the public as well as to those who have dealt with the firm. *Id.*

11. The questions of good faith in the retirement and of actual notice to the plaintiff, are for the jury. *Id.*

12. All the partners are liable for the wrongful seizure of a stranger's goods under an attachment issued by the authority of one partner alone, for the recovery of a partnership debt. *Kuhn* v. *Weil*, 77.

13. Real estate purchased with partnership funds for partnership purposes, although the title be taken in the name of one partner, is treated in equity as personal property if necessary for the settlement of the partnership, and in case of death a sale of such real estate by the surviving partner will be enforced by compelling a conveyance of the legal title. *Shanks* v. *Klein*, 77.

14. An appropriation of partnership funds by one partner to the payment of a debt which the creditor knew was the private debt of the partner, is presumptively fraudulent, but such presumption may be rebutted by proof of authority, consent or ratification by the other parties. *Johnson* v. *Crichton*, 350.

15. Whether such authority or consent was given is a question for the jury. *Id.*

16. A mortgage to a firm without naming the individual partners is valid, and may be foreclosed. *Chicago Lumber Co.* v. *Ashworth*, 142.

17. One partner cannot, without the consent of the others, sell the partnership business, and if he attempts to do so a constructive trust attaches to the property in the hands of the purchaser. *Drake* v. *Thyng*, 422.

PARTNERSHIP.

18. After dissolution, one partner cannot bind the others by note in firm name. *Waller* v. *Davis*, 707, *and note.*

19. A dissolution is not *ipso facto* worked by assignment of the interest of one partner to the others, but such assignment is evidence of dissolution if known to the payee of the note. *Id.*

20. Where one partner withdraws from a firm, a note subsequently given in the firm name by one of the remaining partners for a debt of the old firm, is not binding on his copartners unless the new firm assumed the liabilities of the old firm. *Id.*

21. Where one partner makes his individual note to his own order, and endorses it with his own name and then the name of the firm, and sells it through a broker, appropriating the proceeds to his own use, the firm is liable thereon to a *bona fide* purchaser from the broker. *Redlon* v. *Churchhill*, 487.

22. Where one partner, without the consent of his copartner, brings suit in the firm name, but the copartners take no steps to have it dismissed until a decree entered in favor of the firm is reversed on appeal, they cannot claim relief against the execution of the final decree. *Harris* v. *Mosby*, 755.

23. It makes no difference in such case that the acquiescence of the partners was in consequence of ignorance of the law. *Id.*

24. A partner of a firm formed for an indefinite time may withdraw at any time. *Fletcher* v. *Reed*, 249.

25. Declarations of one partner not made in the presence of the other partners nor subsequently assented to by them, are inadmissible as against them to establish the partnership. *Flournoy* v. *Williams*, 486.

PART OWNER. See SHIPPING, 1.

PATENT. See FRAUD, 1. UNITED STATES, 1.

1. May be subjected by bill in equity to a judgment debt of the patentee. *Ager* v. *Murray*, 469.

2. Upon such a bill the court may compel the patentee to assign or may appoint a trustee for that purpose. *Id.*

3. The question of the identity of the inventions described in the original patent and the re-issue is one for the court and not for the jury, unless it appears from the face of the instruments that extrinsic evidence is needed to explain terms of art or to apply the descriptions to the subject-matter. *Heald* v. *Rice*, 487.

4. A patent for a machine cannot be re-issued for the purpose of claiming the process of operating that class of machines. *Id.*

5. A claim can only be enlarged by a re-issue when an actual *bona fide* mistake has been inadvertently committed, and when it appears from a comparison of the patent and the re-issue that there has been laches in discovering the mistake and applying for the re-issue, the court may declare such re-issue invalid. *Miller* v. *Bridgeport Brass Co.*, 274.

6. A re-issue cannot be had for the purpose of expanding the claim to embrace an invention not specified in the original. *James* v. *Campbell*, 274.

7. A patentee cannot claim in a patent the same thing claimed by him in a prior patent, nor what he omitted to claim in a prior patent in which the invention was described, he not having reserved the right to claim it in a separate patent and not having seasonably applied therefor. *Id.*

8. A patent for a machine cannot be re-issued for the purpose of claiming the process of operating that class of machines. *Id.*

9. The government of the United States has no right to use a patented invention without compensation to the owner of the patent. *Id.*

10. *Quære*, whether an officer of the government can be sued for using an invention only for and in behalf of the government, and whether the Court of Claims is not the only tribunal in which such claim can be prosecuted. *Id.*

11. A bill for an account of profits merely, cannot be sustained. There must be some other equity to which such relief is incidental. *Root* v. *Lake Shore & M. S. Railroad Co.*, 550.

12. A specification is sufficiently clear when intelligible to a person skilled in the art. *Webster Loom Co.* v. *Higgins*, 686.

PATENT.

13. Evidence is admissible to show the meaning of terms used in a patent. *Webster Loom Co.* v. *Higgins*, 686.

14. If an improvement of a well-known appendage to a machine is fully described in a specification, it is not necessary to show the ordinary modes of attaching the appendage to the machine. *Id.*

15. *Quære*, whether the defence of insufficient description can be set up without alleging an intent to deceive the public. *Id.*

16. A new combination of well-known devices producing a new and useful result, may be the subject of a patent. *Id.*

17. Of two original inventors, the first will be entitled to a patent unless the other puts the invention into public use more than two years before the application for a patent. *Id.*

18. An invention relating to machinery may be exhibited as well in a drawing as in a model, so as to lay the foundation of a claim to priority. *Id.*

19. If the omission to set out in the answers the defence of prior invention, is not objected to at the proper time in the court below, it cannot be objected to in the Appellate Court. *Id.*

20. Where a patented improvement is required to adapt a machine to a particular use, and there is no other way of supplying the demand for that use, the damages for infringement should be the entire profits made by the infringer in that market. *Goulds Man. Co.* v. *Cowing*, 623.

21. In such case it is error to restrict the damages to such profits as were realized from the manufacture of the patented improvement as distinguished from the profits realized from the whole machine as improved. *Id.*

22. The claim in letters patent cannot be enlarged by the language used in other parts of the specification. *Lehigh Valley Railroad Co.* v. *Mellon*, 77.

23. To constitute a public use of an invention it is not necessary that more than one of the invented articles should be used, or that such use should be by more than one person. And if the inventor permits such use without restriction, it is a public use, notwithstanding that by the very character of the invention it is only capable of being used where it cannot be seen by the public eye. *Egbert* v. *Lippman*, 205.

PAYMENT. See BILLS AND NOTES, 12, 13.

1. The acceptance of the promissory note of a debtor for a pre-existing debt secured by mortgage is only presumptive evidence of payment, and the question is one of fact for the jury. *Dodge* v. *Emerson*, 550.

2. In such a case it is not error for the judge to remark in his charge that in the event of insolvency the old note and mortgage might be more valuable than the new note. *Id.*

3. Payment of taxes under protest to an officer who has a warrant for their collection and threatens to collect by levy and sale, is not a voluntary payment. *Ruggles* v. *City of Fond du Lac*, 143.

4. Where one buying milk pays for each can on the supposition that it contains eight gallons, when in fact it contains less, he may set off the money paid for the shortage out of any sum he may owe the seller. *Devine* v. *Edwards*, 205.

PENSION.

Taking from a pensioner more than the statutory price for obtaining a pension is *per se* unlawful, although there be no wrongful intention, and such excess may be recovered of the taker in an action by the pensioner. *Smart* v. *White*, 487.

PLEADING. See ARBITRATION. ARREST, 2. CRIMINAL LAW, 19. EQUITY, 10, 18, 19. FRAUDS, STATUTE OF, 6. INSURANCE, 12. LIBEL, 2. MANDAMUS, 2. USURY, 1.

1. In an action for trespass to land, a license must be specially pleaded. *Lockhart* v. *Geir*, 423.

2. Where goods sold are to be paid for in other goods or labor an action to recover the same must be by special count. *Slayton* v. *McDonald*, 422.

3. The complaint should not anticipate and reply to matters of defence. *Uhl* v. *Harvey*, 118.

PLEDGE. See CRIMINAL LAW, 24. CUSTOM, 1. EXECUTION, 6.

1. If a pledgee of a certificate of stock, with a blank power of attorney, wrongfully assigns it as security for money loaned him, the sub-pledgee who receives the stock in ignorance of the owner's equity, is entitled to hold the stock as against the owner, to the extent of the consideration. *Cherry* v. *Frost*, 57, *and note.*

2. An assignment of such stock as collateral, to replace other collaterals surrendered, is an assignment for value. *Id.*

3. The assignee is not entitled to the benefit of subsequent payments upon the stock made by the owner. *Id.*

4. A pledgee of stock may transfer the shares to his own name. *Hubbell* v. *Drexel*, 452, *and note.*

5. Such pledgee is not bound to retain the identical shares if others of the same kind are kept on hand. *Id.*

6. A receipted bill of chattels purporting to be security for a debt, is a pledge and not a mortgage; and if the pledgee permits the pledgor to resume possession and to hold them until his death, he cannot, by then taking possession of them, defeat the right of the administrator to maintain against him an action for their conversion. *Thompson* v. *Dolliver*, 815.

POSSESSION. See LANDLORD AND TENANT, 4.

1. Possession under an unrecorded deed or mortgage, is notice to the same extent as if the instrument was recorded. *Brainard* v. *Hudson*, 686.

2. The record of a judgment in a summary process for the recovery of leased premises by A. against B., is conclusive evidence against B. and his grantees that he was in possession at the time as tenant of A., and that his possession extended to the boundary line of the demised premises. *Richmond* v. *Stahle*, 274.

PRACTICE. See ADMIRALTY, 10. BILL OF EXCEPTIONS, 1, 2. BILLS AND NOTES, 10. CRIMINAL LAW, 14. EQUITY, 4, 13. TRIAL, 1, 2, 4.

1. In a joint action against two defendants for a tort, there may be a verdict and judgment against one alone. *Boswell* v. *Gates*, 422.

2. Any judicial determination arrived at without notice and opportunity to parties to be heard, is void. *Wood* v. *Howard*, 550.

3. A decree based on unsworn statements will be set aside. *Id.*

PRESCRIPTION. See EASEMENT, 1.

PRESUMPTION. See CRIMINAL LAW, 7, 28–30. EXECUTORS, 1. NEGLIGENCE, 4, 8. PARTNERSHIP, 14.

PUBLIC POLICY. See CONTRACT, 11. INFANT, 2. INSURANCE, 11, 15. SHERIFF'S SALE, 1. TELEGRAPH, 10.

An agreement by a lumber dealer to pay to a builder a commission on sales made to the builder's employers, is void as against public policy. *Atlee* v. *Fink*, 678.

RAILROAD. See COMMON CARRIER. CONSTITUTIONAL LAW, 23, 24. CONTRACT, 14. CORPORATION, 8, 10. DAMAGES, 5, 6. EXPRESS COMPANY. MASTER AND SERVANT, 8–11. MORTGAGE, 4, 5, 8–10. NEGLIGENCE, 6–8. RECEIVER, 1–3, 7. SPECIFIC PERFORMANCE, 1.

1. Where by a stipulation on a passenger ticket, it is to be used on or before a certain day, the ticket is good if presented within the time, although the journey is not completed until after the time. *Auerbach* v. *N. Y. Cent. Railroad Co.*, 790, *and note.*

2. Where a ticket binds the passenger to a continuous journey, he is not bound to commence it at the starting point named in the ticket. *Id.*

3. Has exclusive right to track, and owes no duty to parents of young children trespassing thereon. *Cauley* v. *Pittsburgh, Cincinnati and St. Louis Railway Co.*, 622.

4. Parents who permit their children to trespass on the track are guilty of contributory negligence, even though the trespass was without their knowledge. *Id.*

5. A railroad company, over whose road another company has by contract a right to run trains, is liable for injury caused by the negligence of its switch-

RAILROAD.

man to the employees and property of the other company. *In re Central Vermont Railroad Co.*, 687.

6. Is bound to provide for a careful lookout in the direction in which a train is moving in places where people are likely to be upon the track. *Townley* v. *C. M. and St. P. Railroad Co.*, 205.

7. Although a statute makes it unlawful to walk along a railroad track, it is error to reject evidence that many persons had for years been in the habit of passing daily and hourly in the same pathway on which the injured person was passing. *Id.*

8. The omission to ring a bell or sound a whistle as a train approaches a crossing may be given in evidence, in an action for an injury at the crossing, without being specially pleaded. *Goodwin* v. *Chicago, R. I. and P. Railroad Co.*, 685.

9. It is not negligence *per se* to run a train at the rate of twenty-five miles an hour across a public road. *Id.*

10. The fact that a train could not be stopped within the distance that the headlight would show obstructions on the track, is not the true test of negligence. *Milam* v. *L. & N. Railroad Co.*, 755.

11. Grants to be satisfied out of sections along the line of a road give no license to the grantees to roam over the whole public domain lying along the road, but must be satisfied out of the nearest undisposed of sections which meet the conditions named. *Wood* v. *Burlington & Mo. River Railroad Co.*, 206.

RATIFICATION. See ATTORNEY, 5. PARTNERSHIP, 14.

RECEIVER. See CONFLICT OF LAWS, 1. LANDLORD AND TENANT, 5.

1. Receiver of railroad cannot, without leave of the court, be sued for injury caused by the negligence of his employees. *Barton* v. *Barbour*, 274.

2. Where questions of fact are involved the court may either allow the injured party to sue the receiver in a court of law or direct a feigned issue. *Id.*

3. A court of equity may authorize a receiver to keep a road in repair and operate it in the ordinary way. *Id.*

4. The court of another state has no jurisdiction without leave of the court by which the receiver was appointed, to entertain a suit against him for a cause of action arising in the state in which he was appointed. *Id.*

5. In a suit by a receiver on a note taken by his predecessor in office it is no defence to show that the note was given as security for an unauthorized loan of the trust funds by such predecessor. *Corbin* v. *De La Vergne*, 687.

6. The rule that a receiver must apply to the court before expending large sums of money will not be so rigidly enforced as to work injustice where the receiver has acted in good faith, and under such circumstances that previous authority would have been granted on application. *Brown* v. *Hazlehurst*, 77.

7. If the holder of railroad bonds desires to question the right of the receiver to issue, under an order of court, certificates of indebtedness as a first lien on the property, he must do so before such certificates have been issued and sold to *bona fide* purchasers. *Humphreys* v. *Allen*, 275.

8. The courts of Rhode Island cannot appoint a receiver of a foreign corporation doing business in that state. *Stafford* v. *Am. Mills Co.*, 206.

9. RECEIVERS FOR CO-TENANTS, 761.

RECORDS.

The books used by a recorder of mortgages and the researches or memoranda of mortgages made by his clerks are dedicated to the public service and are not his private property. *Herron* v. *McEnery*, 206.

RECOUPMENT. See SET-OFF.

RELEASE. See CONTRACT, 12.

REMOVAL OF CAUSES. See EQUITY, 7.

1. A corporation of one state operating a railroad in another state under a lease, does not become a citizen of the latter state, and if sued therein may remove the case to the federal courts. *Balt. & Ohio Railroad Co.* v. *Koontz*, 143.

REMOVAL OF CAUSES.

2. Where in a federal court the evidence shows that there had been a collusive transfer to give jurisdiction, it is the duty of the court, on its own motion, to dismiss the suit. *Williams* v. *Township of Nottawa*, 207.

3. To entitle a party to a removal under the second clause of the second section of the Act of March 3d 1875, there must exist in the suit a separate and distinct cause of action in respect to which all the necessary parties on one side are citizens of different states from those of the other. *Hyde* v. *Ruble*, 487.

4. The second clause of sect. 639 Rev. Stat. was repealed by the Act of 1875. *Id.*

REPLEVIN. See EVIDENCE, 5. SHIPPING. 1.

RESCISSION. See CONTRACT, 6, 10. INFANT, 1. SHERIFF'S SALE, 4.

RIPARIAN RIGHTS. See NEGLIGENCE, 9, 10. WATERS AND WATER-COURSES, 1–3, 5.

SALE. See ASSUMPSIT. BILLS AND NOTES, 6. CONTRACT, 8. DEBTOR AND CREDITOR, 1–5, 21. FRAUD, 1–3. NEW TRIAL, 3. TROVER, 1–4. UNITED STATES COURTS, 6. VENDOR AND VENDEE.

1. A lease by which the lessee, upon full payment of rent, is to receive a bill of sale, is a conditional sale, and the vendee has an interest which he can mortgage. *Carpenter* v. *Scott*, 550.

2. Such mortgage is valid as against a creditor who attached immediately upon the completion of the last payment. *Id.*

3. An agreement that, "The subscriber has, this 21st day of December 1877, rented of H. (the plaintiff) one choral organ, during the payment of rent as herein agreed, for the full rent of $190, payable as follows: one melodeon valued at $50, as first payment, and one note for $140, due January 15th 1879; with the understanding that if I shall have punctually paid all said rent I shall be entitled to a bill of sale of the organ, and if I fail to pay any of said rent when due, all my rights herein shall terminate, and said H. may take possession of said organ," is not a lease but a conditional sale, and the vendor cannot recover upon the $140-note after the organ had been returned. *Hine* v. *Roberts*, 206.

4. A buyer of an interest in a business who has ample opportunity to examine the goods and the books, has no right to rely upon representations of the seller as to value and amount of business. *Poland* v. *Brownell*, 350.

5. Where the breakage in transportation is not greater than the usual breakage in goods of that character, the vendee cannot refuse to receive them. *Hays* v. *Smith*, 143.

6. A written contract of sale which does not show that it was made by sample cannot be modified by proof that it was so made. *Wiener* v. *Whipple*, 143.

7. Where a known, described and defined thing is sold, there is no implied warranty that it shall answer the purpose for which it is bought, even though the vendor be the manufacturer and the purpose is stated by the vendee. *Rasin* v. *Conley*, 756.

8. Where the vendee declares that he confides in the judgment of the vendor, the latter, if he accepts the trust, is liable for unfair representations, even as to things easily discernible on examination, but he is not liable for mistake of judgment. *Hanger* v. *Evins*, 755.

9. If the vendor knowing the vendee to be inexperienced deceitfully induces the latter not to inquire into the condition of the article, he is guilty of fraud. *Id.*

10. If a vendor knowingly makes a false representation as to the fitness of the article for the purchaser's business, he is liable to the vendee. *Id.*

11. When the vendor of property sold on trial agrees to examine the working of the article and learn the result himself, the vendee need not notify him of its failure. *Gibson* v. *Vail*, 77.

12. It is a species of fraud to sell an article on trial, when the vendor knows or ought to have known that the trial must result in failure. *Id.*

SALE.
13. Conversations of the parties after the written contract is made, about the setting up and manner of using milk pans sold on trial, are admissible. *Gibson* v. *Vail*, 78.

SAVINGS BANK. See GIFT, 2. TAXATION, 10.

SCHOOL. See MUNICIPAL CORPORATION, 10.

SEAL. See CONTRACT, 12. LIMITATIONS, STATUTE OF, 2. MUNICIPAL BONDS, 2.

SET-OFF. See EXECUTORS, 13. PAYMENT, 4. USURY, 1. VENDOR AND VENDEE, 6.
1. A motion that one judgment be set off against another is an appeal to the equitable powers of the court, and in granting it the claim of the attorneys for fees will be respected. *Diehl* v. *Triester*, 275.
2. A *bona fide* purchaser in market overt of stolen cattle cannot, in an action by the owner after conviction of the thief, set off a claim for the keep of the cattle. *Walker* v. *Matthews*, 574, *and note.*

SHERIFF. See CONTEMPT, 1. SHERIFF'S SALE.
1. Sheriffs under writs directing in general terms the seizure of a debtor's property must at their peril determine the ownership of the property seized, but under writs commanding the seizure of specific property they incur no responsibility, and are bound only to look to the jurisdiction of the court and to the proper execution of its mandates. *Clavarie* v. *Waggaman*, 207.
2. The sheriff of one county cannot make an arrest in another county except on fresh pursuit in case of an escape, nor can he detain in such other county an arrested prisoner except under a writ of *habeas corpus*. *Page* v. *Staples*, 207.
3. A sheriff is not obliged to travel about with an arrested prisoner to enable the latter to procure bail. *Id.*
4. A person appointed in writing by the sheriff to act as deputy possesses authority such as the sheriff himself may exercise. *Turner* v. *Holtzman*, 78.
5. The sheriff or his deputy may abate a public nuisance in a public highway, and in so doing may call other persons to his assistance. *Id.*

SHERIFF'S SALE. See EXECUTION, 5. INJUNCTION, 3, 4.
1. A contract between the defendant on an execution and a proposed purchaser of his property whereby the defendant agrees not to have the property run up, and the purchaser agrees to pay him the difference between the price brought and one thousand dollars, is founded on sufficient consideration and is not illegal. *Matthews* v. *Starr*, 481.
2. A renunciation by an insolvent debtor in favor of a particular creditor, dispensing with the forms of law, and by which the value of his property sold under execution is diminished, is contrary to good morals, and a sheriff knowing of the insolvency and dispensing with such forms in the sale is liable in damages to other creditors. *Tupery* v. *Harper*, 143.
3. The price brought by the property so sold will not be taken as a standard of its value. *Id.*
4. A creditor participating in the proceeds of a sheriff's sale is estopped from attacking it, unless the participation was made in error of fact, in which case the creditor upon return of what he has received may, in a suit to which all who participated in the proceeds are parties, have his participation rescinded. *Adams* v. *Moulton*, 551.
5. Purchaser is liable only to the sheriff for breach of his contract of purchase. *People* v. *Stelle*, 687.

SHIPPING. See ADMIRALTY. BILL OF LADING. EQUITY, 3. NEGLIGENCE, 2.
1. A part owner of a vessel cannot maintain replevin for his undivided part, although he owns a major interest in the vessel. *Hackett* v. *Potter*, 275.
2. A seaman discharged in a foreign port who is prevented by the conduct of the master from making application to the consul, may recover in an action at law against the master his proportion of the extra pay which sects. 4582 and

SHIPPING.

4584 U. S. Rev. Stat. require the master to pay to the consul. *Wilson* v. *Borstell*, 488.

3. The provision of sect. 4513, Revised Statutes, that the fee of $2 required to be paid to the shipping commissioner for each seaman shipped, under sects. 4511 and 4512, shall not be exacted, where, on the return of the vessel, the sailor reships in the same vessel for another voyage, applies to reshipments for all voyages succeeding the first in regular order, and is not limited to the reshipment for the one voyage immediately following the one at which the fees were paid. *Young* v. *American Steamship Co.*, 551.

SLANDER. See HUSBAND AND WIFE, 26.

In an action of slander a refusal to charge that if plaintiff's general character was bad, that fact must be considered in estimating the damages, is error. *Campbell* v. *Campbell*, 623.

SPECIFIC PERFORMANCE. See INSURANCE, 18.

1. Will be decreed of a contract by a railroad company to issue bonds where the proceeding is an amicable one to test the power of the company to make such issue. *Phila. and Reading Railroad* v. *Stichter*, 713.

2. May be decreed of part of lands with compensation for the residue, but equity will not assume jurisdiction merely to award compensation where the vendee knows that the vendor cannot convey. *Bonner* v. *Little*, 756.

3. Where specific performance is decreed of part, the price should be abated in the proportion that the value of the tract is diminished by the deficiency. *Id.*

4. Where the terms of a contract rest wholly or partially in parol, and specific performance is sought on the ground of part performance, the terms must appear clearly and unequivocally; but the fact that the details of the agreement are controverted by the parties will not deter the court from ascertaining and giving effect to its terms. *Wharton* v. *Stoutenburgh*, 623.

5. Delivery of possession by a vendor or lessor accepted by the vendee or lessee is such an act of part performance as will take the contract out of the Statute of Frauds, and justify a decree for specific performance. *Id.*

6. Courts of equity will not decree specific performance of a contract of such a nature that to carry the decree into effect would require their continued personal supervision, but a contract for a lease of mines to be worked in a specified manner, is not within this principle. The court can grant relief by a decree that the lease be executed, leaving complainant to his legal remedy for breaches of the covenants contained in it. *Id.*

STATUTE. See CONFLICT OF LAWS, 4. CONSTITUTIONAL LAW, I. EXECUTION, 7, 8. TRIAL, 3. UNITED STATES COURTS, 2, 3.

1. Will be construed in the sense in which it has been long enforced by the departments of government. *State* v. *Kelsey*, 687.

2. Where excessive freight is collected during the existence of a statute making it unlawful, the repeal of the statute will not prevent the recovery of damages for such unlawful act. *Graham* v. *C. M. & St. P. Railroad Co.*, 207.

STOCK. See CONTRACT, 4. CUSTOM, 1. GIFT, 1. LIFE TENANT. PLEDGE, 1–5.

STOCK EXCHANGE.

Nature of right to seat in. *Note to Smith* v. *Barclay*, 408.

STOPPAGE IN TRANSITU.

The right of stoppage in transitu is not defeated by an attachment of the goods after the termination of the transit, but while they still remain in the carrier's hands. *Mississippi Mills* v. *Union & Planters' Bank*, 534, *and note.*

STREET. See ACTION, 2. CONSTITUTIONAL LAW, 23. MUNICIPAL CORPORATION, 1, 3, 7, 11, 12, 22. NUISANCE, 2.

1. An obstruction of the sidewalk by cotton bales in front of a warehouse, if continued longer than is reasonably necessary for their transit into the ware-

STREET.
house, is a nuisance, and if a passer-by be injured thereby, the warehouseman is liable. *Maddox* v. *Cunningham*, 488.
2. Even if such obstruction be continued only for a reasonable time, yet if the bales be placed on the sidewalk so negligently as to cause injury to a passer-by, the warehouseman is responsible. *Id.*

SUBROGATION. See EXECUTORS, 10. NEGLIGENCE, 1. VENDOR AND VENDEE, 8.
1. If an heir to whom lands descend sells the same at private sale without administration on the ancestor's estate, to a *bona fide* purchaser, who applies the purchase-money to discharge liens and preferred claims, such purchaser will be subrogated to the rights of the holders of such claims. *Sidener* v. *Hawes*, 275.
2. Mortgagee paying taxes may be subrogated by decree, to the rights of the state as to lien, &c. *Sharp* v. *Thompson*, 75.
3. An agreement for subrogation on payment of first mortgage by third person at request of mortgagor, may be enforced against second mortgagee. *Shreve* v. *Hankinson*, 75.

SUNDAY. See CRIMINAL LAW, 4.

SURETY. See BILLS AND NOTES, 21. GUARDIAN AND WARD, 1, 2. LIMITATIONS, STATUTE OF, 4.
1. A surety on a note is discharged by the addition of other sureties without his knowledge. *Berryman* v. *Manker*, 423.
2. After damages assessed on his bond the surety for an assignee for creditors cannot object to a creditor's claim included therein which has been allowed and included in the assignee's accounts. *In re Estate of Stelle*, 144.
3. The right of sureties to be relieved from responsibility for the future acts or defaults of administrators or guardians is absolute and must be granted, but where the sureties do not appear on the day set by the court for the hearing their application may be dismissed. *Allen* v. *Sanders*, 114.
4. The omission of a company to collect monthly balances due from an agent does not discharge the sureties on a bond given by the agent to the company for faithful performance of his duties. *Watertown Fire Ins. Co.* v. *Simmons*, 276.
5. An endorsement on a note of an agreement to reduce the rate of interest is not an alteration of the note and does not discharge a surety of the maker. *Cambridge Sav. Bank* v. *Hyde*, 276.
6. A surety on an administrator's bond cannot avoid liability by showing that he signed upon an understanding with the administrator made known to the probate court that another person was also to sign, and that the other person never signed. *Wolff* v. *Schaeffer*, 488.
7. If an administrator who has converted assets by pledging them for his own purposes, fails to recover them when he might, his conduct constitutes a continuing breach, and if he has given an additional bond after the original conversion, but while he might yet recover the assets, the sureties in both bonds will be liable. *Id.*
8. The surety on an administrator's bond cannot attack collaterally a final settlement from which there has been no appeal. *Id.*
9. Where two persons gave their joint note for money loaned on an agreement known to the lender that each was to have one-half, it is not a case of suretyship, and a verbal agreement by the lender on payment of one-half by one maker to look to the other for the balance, is not binding. *Small* v. *Older*, 756.
10. Where the proceeds of mortgages executed to secure an individual note and a joint note were not sufficient to pay both, the holder of the notes was under no obligation to apply the sum realized upon both notes *pro rata*, but might apply the entire sum upon the individual note. *Id.*
11. The giving of a bond as collateral to a subsisting bond and mortgage does not, *per se*, suspend the right to proceed upon the latter, and a surety of the mortgagor is not discharged thereby. *Fireman's Ins. Co.* v. *Wilkinson*, 621.

TAX AND TAXATION. See CONSTITUTIONAL LAW, 7, 15. DEED, 5. DOMICILE. ERRORS AND APPEALS, 1. EXPRESS COMPANY. MANDAMUS, 3.

TAX AND TAXATION.

MUNICIPAL CORPORATION, 6, 17. PAYMENT, 3. SUBROGATION, 2. TRESPASS, 1.

1. It is entirely within the province of the legislature to determine the rules of assessment of property and for the collection of taxes. *State* v. *Board of Assessors*, 207.

2. The owner of real estate is not personally liable for taxes assessed against another as owner. *City of Jefferson* v. *Mock*, 351.

3. An exemption of registered public debt from taxation by the laws of the debtor state cannot affect the right of another state to tax such debt in the hands of its own residents. *Bonaparte* v. *Appeal Tax Court of Baltimore*, 290, *and note.*

4. The recovery by the state of a personal judgment against the owner of land for taxes does not discharge a statutory lien for such taxes. *People* v. *Stahl*, 276.

5. Under the Act of Congress of July 14th 1870, repealing the legacy tax, personal property bequeathed to remaindermen after a life estate to testator's widow, prior to the passage of the act, but not vesting in possession through the death of the life-tenant until after the passage of the act, is not liable to the tax. *Mason* v. *Sargent*, 624.

6. The interest of a citizen of Maryland residing in Baltimore, as part owner of a vessel employed in foreign commerce, registered at Baltimore which is her home port and the residence of her owners, is liable for annual taxes levied on it by that city for municipal purposes. *Gunther* v. *Mayor, &c., of Baltimore*, 78.

7. The necessities of government and custom and usage have established a procedure in regard to the levy and collection of taxes which, although differing from proceedings in courts of justice, is still "due process of law." *Kelly* v. *City of Pittsburgh*, 78.

8. What parts of a state shall, for local purposes, be governed by a county, a town or a city government, and the character of the land included in each, are matters within the legislative discretion. *Id.*

9. When the taxes levied by a city upon land are clearly for a proper public purpose, and are authorized by statute, the court cannot say that such statute deprives the owner of his property without "due process of law," because the land is farm land and does not reap the same benefits as land in the heart of a city. *Id.*

10. The partial exemption from taxation allowed by sect. 3408 Rev. Stat. to deposits in a savings bank having no capital stock, and operating without profit to itself, applies to all deposits to the extent of $2000 each, and not merely to deposits of $2000 or less. *German Savings Bank* v. *Archbold*, 687.

11. The court of claims has jurisdiction of a suit to recover from the government the amount of a claim for taxes illegally collected, which claim had been duly presented to the commissioner of internal revenue and allowed under sects. 3220 and 3228 Rev. Stat. *United States* v. *Real Estate Savings Bank*, 423.

12. A claim presented to the collector within the period limited by sect. 3228 for presentation, is in time although not forwarded by the collector to the commissioner until after such period. *Id.*

13. Decisions of officers and tribunals, specially charged in tax laws, with the duty of valuing property and equalizing the valuations, are final. *Wagoner* v. *Loomis*, 423.

14. Even in cases of fraudulent discrimination equity will not relieve a taxpayer whose property has not been taxed more than if a proper assessment had been made. *Id.*

15. Where it is reasonably certain that a demand for reduction will be refused, such demand is not a prerequisite to a bill for relief against the collection of the whole tax. *Hill* v. *Nat. Albany Exchange Bank*, 624.

16. The investments in foreign countries of part of the capital of a bank, if of the character usually made by banks in doing a banking business, are liable to taxation by the state in which the bank is incorporated. *Nevada Bank* v. *Sedgwick*, 144.

17. Whether, if such investments had been made in fixed property subject exclusively to another jurisdiction, a different rule would apply, not considered. *Id.*

TAX AND TAXATION.

18. A provision in the charter of a corporation that it shall pay a tax on its capital stock in lieu of all other taxes, exempts only the property necessary for its business. *Bank of Commerce* v. *State of Tennessee*, 351.

19. Portions of a bank's building leased by it to other parties, and lots bought by it at a sale under a deed of trust made to it to secure a debt, are not within such exemption. *Id.*

20. In the case of an ordinance authorizing a particular improvement, there is a presumption that councils had determined that those who were specially assessed would be specially benefited. *Mayor and Councils of Baltimore* v. *Johns Hopkins Hospital*, 351.

21. The court cannot review such determination at the instance of the property owners specially taxed. *Id.*

22. If, however, a local assessment should be so unequal as to become extortion and confiscation, it would be the duty of the court to interfere. *Id.*

TELEGRAPH. See CONSTITUTIONAL LAW, 15.

1. The message sent to a telegraph office to be transmitted is the original, and the message received at the place to which it is transmitted is but a copy. *Smith* v. *Easton*, 79.

2. The delivery of the original message at the office must ordinarily be shown with proof of its authenticity. Where, however, the original has been destroyed the copy may be admitted, but only upon proof that it is a correct transcript of a message actually authorized by the party sought to be affected by its contents. *Id.*

3. The rule which permits a letter to be admitted in evidence without other proof of the handwriting than the fact that in due course it had been received in reply to a letter which had been addressed to the same party does not apply to a telegram received in answer to another telegram. *Id.*

4. A telegraphic dispatch is a sufficient writing to take a case out of the Statute of Frauds. *Id.*

5. A telegraph company is bound to perform its contract with integrity, skill and diligence; and if, by reason of the want of any of these qualities a message be improperly transmitted, the company will be liable. *Western Union Telegraph Co.* v. *Blanchard*, 351.

6. If it is necessary for the company, in transmitting messages with integrity, skill and diligence, to have them repeated, the duty of so doing devolves upon it, not upon the sender. *Id.*

7. The company cannot, by any regulation of its own, protect itself against damages resulting from every degree of negligence except gross negligence or fraud. Nor can it limit the damages to be recovered to a return of the amount of toll paid. *Id.*

8. A message, "Cover two hundred September and one hundred August," was shown to be the ordinary expressions used in the cotton trade, meaning that the person receiving the message should sell for the sender two hundred bales of cotton deliverable in August, and one hundred deliverable in September. *Held*, that it was not such an obscure message as would limit the usual liability of the company. *Id.*

9. Where an agent incurs a loss by the negligent transmission of a telegram, the principal upon reimbursing him may recover from the company. *Id.*

10. The illegality of the contract would not relieve the company for liability for its negligence. *Id.*

TENANT FOR LIFE. See LIFE TENANT.

TORT. See DEBTOR AND CREDITOR, 15. PRACTICE, 1.

It is an actionable offence for a married man to offer himself in marriage to an unmarried woman, and a declaration in such action counting tortwise for fraud is good. *Pollock* v. *Sullivan*, 79.

TRADEMARK.

1. A mere general description by words in common use of a kind of article, or its nature and qualities, cannot of itself become a trademark. *Larrabee* v. *Lewis*, 276.

TRADEMARK.

2. "Snowflake" as applied to bread or crackers is a mere description of whiteness, lightness and purity. *Larrabee* v. *Lewis*, 276.

3. An arbitrary word not descriptive of the character or quality of the article may become a trademark. *Id.*

4. In order to have a trademark protected by injunction it should appear that the defendant's use of it was with the intent to mislead the public. *Id.*

5. A trade name of a firm is property to which the firm have an exclusive right, and it may be assigned to a successor firm, who thereby obtain the same right. *Howard* v. *Park*, 644, *and note.*

6. A dealer in a commodity identical with that dealt in by such firm will be enjoined from the sale of such commodity in a wrapper countersigned with such trade name even though the dealer purchased the commodity from a manufacturer who was authorized to affix the trade name to goods designed for the firm to which it belonged. *Id.*

TRESPASS. See CRIMINAL LAW, 26, 32. HUSBAND AND WIFE, 25. MUNICIPAL CORPORATION, 11. PARTNERSHIP, 4. PLEADING, 1. WATERS AND WATERCOURSES, 1.

1. A tax sale at another hour from that to which the sale had previously been adjourned renders the officer a trespasser notwithstanding that the property sold well and that plaintiff's attorney was present and said nothing. *Buzzell* v. *Johnson*, 687.

2. A mere license may be by parol, and is a defence for actions committed before its revocation, but the commencement of an action for damages by the licensor is a revocation. *Lockhart* v. *Gier*, 423.

TRIAL. See CRIMINAL LAW, 2, 14. EVIDENCE. LIBEL, 3. NEW TRIAL. PATENT, 3. VERDICT.

1. In trespass for assault and battery, where issue was joined on an answer justifying the trespass, the right to begin and close is in the plaintiff, unless special reasons exist authorizing the court to change the order, but unless it affirmatively appears that such special reasons do not exist the appellate court will not reverse because the defendant was allowed to begin and close. *Dille* v. *Ingersoll*, 144.

2. The court may allow the introduction of evidence after the conclusion of the arguments of counsel. *Darland* v. *Rosencrans*, 551.

3. Whether a reversing act of the legislature is or is not a law is a question for the court and not for the jury. *Amoskeag Nat. Bank* v. *Ottawa*, 687.

4. A party may dismiss his case even after the court has indicated what the instructions to the jury will be. *Mullen* v. *Peck*, 757.

5. Even in a case where it would not be improper to leave the case to the jury the court may give a binding instruction if the evidence is not sufficient to warrant a contrary verdict. *Stewart* v. *Town of Lansing*, 424.

6. It is error to charge that if the witnesses are equally credible the greater number will be entitled to the greater weight. *Bierback* v. *Goodyear Rubber Co.*, 424.

TROVER. See BAILMENT, 3. INFANT, 1. PLEDGE, 6.

1. One purchasing chattels by means of a fraudulent representation that he is the agent of another person, acquires no title thereto, and an innocent vendee from him is liable in trover for the value of the chattels, less whatever portion of the consideration was paid to the owner by the fraudulent purchaser. *Hamet* v. *Letcher*, 144.

2. The vendor in a conditional sale cannot maintain an action of tort in the nature of trover against an officer who, before payment, attaches the chattels as the property of the vendee. *Newhall* v. *Kingsbury*, 551.

3. A vendor who has been induced to sell by fraudulent representations of the vendee, and who, before discovery of the fraud, has received part payment, may maintain trover against a mortgagee from the vendee, without previous demand or tender of the sums received. *Warner* v. *Vallily*, 552.

4. In such case the part payment received may be retained as indemnity, to be subsequently deducted from the amount of damages recoverable by the vendor. *Id.*

TROVER.

5. Where plaintiff has a qualified interest in the chattel, he is entitled only to a sum sufficient to indemnify him and not to the whole value of the chattel. *Warner* v. *Vallily*, 552.

6. One who has assigned a mortgage as collateral and failed to tender the debt and demand a re-assignment until after foreclosure by the assignee, cannot then maintain trover in case of a refusal to assign. *Rice* v. *Dillingham*, 424.

TRUST AND TRUSTEE. See CHARITY. CORPORATION, 25, 26. COSTS, 1, 2. GIFT, 2. PARTNERSHIP, 17.

1. Where a trustee refuses to account for profits, or has so mingled the property with his own that he cannot separate the profits, he will be charged with compound interest. *State* v. *Howarth*, 277.

2. A trustee may appeal where the decree affects his commissions or where he is interested in the fund, or where the question of the increase or decrease of the whole fund is involved, but not where the contest is between creditors as to their respective rights against each other. *Frey* v. *Shrewsbury Sav. Inst.*, 757.

3. Where, however, the trustee, in appealing, acted in good faith in pursuance of what he supposed to be his duty, the costs will be paid out of the fund. *Id.*

4. Trustees ordering work done under an order of court granting them authority to do so, are personally liable to the mechanics for the price of the work unless the latter have agreed to look only to the trust funds. *Gill* v. *Carmine*, 79.

5. Where trustees have power to sell at their discretion and re-invest, a purchaser is not bound to see to the application of the purchase-money. *Van Bokkelen* v. *Tinges*, 757.

8. Where a deed conveyed land to the wife of the grantor for her use for life, provided that it should be used by the grantor's children, together with his wife as a home, and at her death be divided among them, and with power in the wife "at any time in her discretion to sell and convey the said property by deed, provided the proceeds of such sale are invested in other real estate for the uses expressed," a *bona fide* purchaser from the wife would not be bound to see to the application of the proceeds. *Guill* v. *Northern*, 277.

ULTRA VIRES. See CORPORATION, 7–10.

UNDUE INFLUENCE. See LUNATIC, 5. WILL, 11–15.

UNITED STATES. See PATENT, 9.

1. A patent for land is conclusive as to all matters determined by the Land Department when its action is within the scope of its authority, but such patent may be collaterally impeached in any action by showing that the department had no jurisdiction. *St. Louis S. & R. Co.* v. *Kemp*, 352.

2. There is nothing in the Acts of Congress which limits the size of a mining claim for which a patent may issue. The limitations in sects. 2330, 2331, Rev. Stat. relate to locations and not to patents. *Id.*

3. The owner of contiguous locations may consolidate them into one and present but a single application for a patent, such patent may be granted by the Land Department. *Id.*

4. The courts have no appellate jurisdiction over the rulings of the Land Department, nor can they reverse such rulings in a collateral proceeding where there has been no fraud on or by the officers of the department. *Quimby* v. *Coulan*, 552.

UNITED STATES COURTS. See ADMIRALTY, I. CONFLICT OF LAWS, 2. EQUITY, 7. ERRORS AND APPEALS, 4–10, 16. JUDGMENT, 2. MUNICIPAL BONDS, 3. REMOVAL OF CAUSES. TAXATION, 11. UNITED STATES, 4.

1. In a cause removed to a federal court the competency of a witness is to be determined by sect. 858 Rev. Stat., notwithstanding the fact that while the case was pending in the state court the witness had been declared incompetent under the state law. *King* v. *Worthington*, 137.

UNITED STATES COURTS.

2. A statute of a state which has been held by its highest courts invalid because not passed as its constitution directs, cannot be held valid by the federal courts upon the same evidence. *Amoskeag Nat. Bank* v. *Ottawa*, 688.

3. The construction given by the Supreme Court of a state to a Statute of Limitations of the state, will be followed by the United States Supreme Court in a case decided the other way in the circuit court before the decision of the state court. *Moores* v. *Citizens' Nat. Bank*, 345.

4. A statutory proceeding under which, after a fruitless execution, a judgment-debtor is summoned before a judge or referee and compelled to make discovery as to his ownership of property, is within the provision of sect. 916 U. S. Rev. Stat., that the party recovering a judgment in a common-law cause in any circuit or district court, shall be entitled to similar remedies upon the same as are provided in like causes by the laws of the state in which such court is held. *Ex parte Boyd*, 688.

5. Will follow the decisions of the state courts even on questions of commercial law, if the party would otherwise be subjected to a double payment. *Sonstiby* v. *Keeley*, 235, *and note*.

6. Whether in a common-law action involving the validity of a sale, the court can apply the equitable principle that an innocent vendee, paying a portion of the consideration after discovery of the fraud, will be liable to that extent. *Quære*, *Id.*

USURY. See CONTRACT, 5. CORPORATION, 10. NATIONAL BANK, 2.

1. One who has paid usury is entitled to have it deducted as an equitable offset, without plea or answer. *Cross* v. *Mann*, 80.

2. Substituting new notes and a new mortgage for an old one does not change the debt, and usury paid on the old debt may be deducted on ascertaining the amount due on the last mortgage. *Id.*

3. When overdue notes are transferred, usury paid to the original owner may be deducted. *Id.*

4. A. at the request and for the benefit of B., borrowed money and reloaned it to B., under an agreement that A. should receive the same rate of interest that he paid, and two per cent. for his expenses and credit. B. paid A. according to contract, and A. paid the creditor. *Held*, that the money so paid was not usury. *Held, further*, that whatever was paid in excess of the legal rate during that portion of the time when A., by reasonable diligence could have borrowed at six per cent., was usury. *Ricker* v. *Clark*, 688.

VENDOR AND VENDEE. See DAMAGES, 1. FIXTURES, 2. INSURANCE, 23. LIS PENDENS, 2. MORTGAGE, 24. SALE. SPECIFIC PERFORMANCE. TROVER, 1–3. WARRANTY.

1. Where one sells land for cotton to be afterwards delivered, he has no lien on the land for performance. *Harris* v. *Haine*, 424.

2. The taking of the secured note of a third person endorsed by the vendee is a waiver of the vendor's lien. *Kendrick* v *Eggleston*, 552.

3. Vendor's lien waived by taking collateral for the purchase-money. *Ilett* v. *Collins*, 688. *Boyer* v. *Austin*, 688.

4. Debts for purchase-money barred by the Statute of Limitations cannot be enforced by a vendor's lien. *Ilett* v. *Collins*, 688.

5. Where a vendor who has conveyed the land to the vendee but has a lien for unpaid instalments of the purchase-money, sues for one of such instalments, recovers judgment and sells the land under execution thereon, he cannot afterwards enforce his vendor's lien for the remaining instalments. *Dickason* v. *Ely*, 80.

6. A vendee who has made part payment, and who, to protect himself, buys the title of his vendor at sheriff's sale, is not thereby relieved from his contract of purchase, but may set off the amount so expended by him against the balance of the purchase-money. *English* v. *English*, 815.

7. Rights of vendee in case of damage to property by fire before completion of purchase. *Note to Rayner* v. *Preston*, 94.

8. One purchasing land for the benefit of another, and taking the deed in the latter's name, stands in the place of the vendor, and is entitled to a lien for purchase-money advanced for the vendee's benefit. *Carey* v. *Boyle*, 208.

VENDOR AND VENDEE.

9. Where parties purchase from a common vendor who has laid out in the rear an alley common to them all, but by their titles their lots run back only to such alley, they receive no right except that of use to the land taken up thereby. *Bourke* v. *Perry*, 207.

10. The assignee of a contract for the sale of real estate by accepting the assignment becomes personally liable for the purchase-money. *Wightman* v. *Spofford*, 424.

VERDICT. See ERRORS AND APPEALS, 17. NEW TRIAL, 1.

1. When arrived at by means other than conviction of judgment on the part of the jury, will be set aside. *Dreyfus* v. *Lincoln*, 552.

2. The mere fact that the jury has allowed plaintiff less than the evidence shows him entitled to, if his theory be adopted, does not establish the fact that the verdict was a compromise one. *Id.*

3. Circumstantial evidence can supply the place of direct proof only when it points plainly to a particular conclusion, and can be reasonably explained only upon such particular theory. *Id.*

VESSEL. See ADMIRALTY. EQUITY, 3. FRAUDS, STATUTE OF, 1. NEGLIGENCE, 2. SHIPPING. TAXATION, 6.

VOLUNTARY CONVEYANCE. See DEBTOR AND CREDITOR, 6, 8. GIFT. HUSBAND AND WIFE, 27.

VOLUNTARY PAYMENT. See PAYMENT.

WAGER. See CONTRACT, 4. INSURANCE, 11. TELEGRAPH, 10.

WAGES. See SHIPPING, 2.

WAIVER. See ARREST, 3. CONTRACT, 10. CRIMINAL LAW, 2. INSURANCE, 6, 8.

WAREHOUSEMAN. See STREET, 1, 2.

WARRANTY. See DAMAGES, 3. JUDICIAL SALE, 2. SALE, 7, 8.

An outstanding equitable title is not a breach of warranty of title until it is successfully asserted. *Wilson* v. *Irish*, 815.

WATERS AND WATERCOURSES. See CONSTITUTIONAL LAW, 5. NEGLIGENCE, 9, 10.

1. One who owns land on each side of a navigable stream above the tide has the exclusive right to the ice formed thereon and may maintain trespass against a stranger who removes such ice. *Washington Ice Co.* v. *Shortall*, 313, *and note.*

2. The measure of damages for cutting and removing such ice is the value of the ice as soon as it has been cut and prepared for removal. *Id.*

3. Riparian owners on a navigable stream cannot recover damages for a diversion of the water by the state, or by a corporation acting by authority of the state for the improvement of the navigation. *Black Riv. Imp. Co.* v. *La. C. Booming and Trans. Co.* 424.

4. A deed of a tide-mill privilege, mill dam, wharf privilege, and the right to flow the creek and adjoining lands to high-water mark, "and all the rights and highways connected with and belonging to said mill privilege," gives the grantee no right to ice cutting nor title to the ice formed by changing the dam so as to exclude the salt water. *Dyer* v. *Curtis*, 80.

5. The right of a riparian owner to the water of a stream is not modified by the fact that the flow of the stream has been increased by reservoirs. *Silver Spring B. and D. Co.* v. *Wanskuck Co.*, 815.

6. The right to take "exclusively all the sea manures and drift stuff which lands on the West Shore, also to have the right of tipping the same and carting away at their pleasure, by a road or way leading on the bank of said West Shore clear of the gullies," does not embrace goods floated ashore from a wrecked vessel, and is confined to such stuff as could be collected and legally appropriated, not such as must be held for or delivered to a known owner. *Watson* v. *Knowles*, 816.

WATERS AND WATERCOURSES.

7. A dam built without legislative authority across an arm of the sea, to exclude the salt water for the purpose of creating an ice pond, is a public nuisance. *Dyer* v. *Curtis*, 80.

8. Without such authority such dam never acquires the right to exist by prescription. *Id.*

9. A lease by which the lessor agrees to keep up such dam is void, as against public policy, and either party may set up its illegality. *Id.*

WAY. See EASEMENT, 2–4.

WHARF. See NEGLIGENCE, 11.

WILL. See CORPSE. LEGACY.

1. Where a legacy to a class takes effect in point of right at one time, and in point of enjoyment at another, all will take who are embraced in the class at the time of enjoyment. *Jones's Appeal*, 272.

2. A devise of "all" of testator's property is a devise of the fee. *Piatt* v. *Sinton*, 269.

3. Where there is a devise in fee with a provision that if the devisee should die without leaving legitimate heirs of her body the estate should go to persons named, the fee taken by the first devisee is determinable only on the contingency of her dying without leaving such heirs living at the time of her death. *Id.*

4. A bequest to the executors in trust for the separate use of testator's daughter for life, "and from and after her death in trust for such child or children as she may leave, his, her or their assigns forever, but if my said daughter shall die leaving no children or child, then to my right heirs living at the time of their death," creates an executory devise which vests on the death of the life usee only in such of her children as survive her. *White* v. *Rowland*, 352.

5. Grandchildren cannot take under a bequest to children unless there be something in the will to indicate such intention. *Id.*

6. A testator directed his executors to invest a fund and to pay to his widow, for life or widowhood, one-third of the interest thereof, and to his children and grandchildren, whom he named, the remaining interest in designated portions; that if any such child or grandchild should die without issue, the survivors should take such decedent's share in like portions; that if any of them should die leaving lawful issue over twenty-one years of age, the executor should pay to the representatives of such decedent the principal on which such decedent had received the interest. One child died during the lifetime of the widow, leaving a daughter over twenty-one. *Held*, that the executors could pay her the principal of her share on her producing the widow's release of her interest therein. *Valentine* v. *Smith*, 140.

7. If a description of a legatee applies to different persons, the executor may maintain a bill of interpleader. *Moss* v. *Stearns*, 547.

8. In such case the costs, as between solicitor and client, of all parties to the bill are payable out of the general estate. *Id.*

9. Extrinsic evidence is admissible to show testator's relation to and feeling towards the respective claimants. *Id.*

10. A woman who had two nephews, one named Joseph White Sprague, and the other Joseph Sprague Stearns, by her will bequeathed a legacy "to my nephew, J. S. Sprague." *Held*, that the inference was that she intended Joseph White Sprague. *Id.*

11. Fraud or undue influence in procuring one legacy in a will does not invalidate other legacies, and a jury may find the will void as to the one legacy and valid as to the other. *Harrison's Appeal*, 208.

12. That the draughtsman was made the executor and his relations received a considerable portion of the estate devised, does not raise a presumption of undue influence. *Carter* v. *Dixon*, 816.

13. If the testator is competent in mind, and makes the will freely and voluntarily, the fact that he has preferences, dislikes and unfounded prejudices, will not avoid it. *Id.*

14. Where the only relevancy of a difficulty is to show the state of feeling

WILL.

between parties, the fact of the difficulty may be admissible, but its particulars are not. *Carter* v. *Dixon*, 816.

15. Undue influence must be established by other evidence than testator's declarations, although they are admissible to show the extent and effect of such influence. *Rusling* v. *Rusling*, 816.

16. Upon a failure to establish a will after caveat, the court can only enter judgment for costs against the propounder, and not against the legatees who have aided him. *Frances* v. *Holbrook*, 277.

17. Whether one who propounds a will at the instance or for the benefit of another can recover from the latter the costs, *quære*, *Id.*

18. Costs of detective employed by the principal legatee, if his services were valuable in establishing the will, may be paid out of the estate. *In re Lewis*, 816.

19. Where a will is destroyed with the connivance of part of the heirs, and no copy is in existence, a devisee not a party to such destruction is only required to show, in general terms, the disposition of property made by the instrument, and that it purported to be testator's will, and was duly attested. *Anderson* v. *Irwin*, 277.

20. On a bill to establish a will destroyed after the testator's death, proof of the sanity of the testator is not indispensable in the absence of counter proof, and the disposition made by him of his property may of itself afford sufficient evidence of his sanity. *Id.*

21. *Semble*, if a will be *bona fide* presented for probate, the costs, in cases of rejection, should fall upon the estate. *Id.*

22. The title of a *bona fide* purchaser from an executor under a sale by order of the probate court, will not be affected by the discovery of a later will. *Davis* v. *Gaines*, 208.

23. When the purchase-money, paid by a purchaser in good faith, of real estate of a decedent ordered to be sold by a probate court, has been applied to the extinguishment of a valid mortgage, and it turns out that the sale is irregular or void, the purchaser cannot be ousted of his possession without a repayment of the purchase-money so applied. *Id.*

WITNESS. See ARREST, 1. CRIMINAL LAW, 12. EVIDENCE, 14, 15, 20. TRIAL, 6. UNITED STATES COURTS, 1.

The fact that the witness is incompetent because he does not believe in a Supreme Being cannot be proved by examining the witness, but must be shown by his previous declarations. *Searey* v. *Miller*, 811.

END OF VOL. XXX.